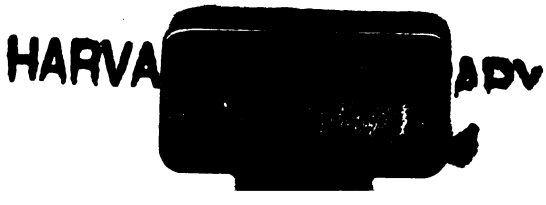

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# CONSTITUTIONS

## of

# 1875 AND 1901

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*PARALLELED, ANNOTATED AND INDEXED*

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BY JAMES J. MAYFIELD
OF TUSCALOOSA

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# DEDICATION

*As an appreciation of the earnest, faithful and efficient work done by Judge Thomas W. Coleman, Sr., and Hon. John B. Knox, one as a member and the other as President of the Constitutional Convention, which framed the Constitution of 1901, this compilation is sincerely dedicated without their knowledge or consent.*

# PREFACE.

This work is intended to supply the people of the State who may desire it with a copy of the State Constitutions of 1875 and 1901, paralleled, annotated and indexed.

The two Constitutions are paralleled so that the corresponding provisions appear in columns opposite each other. If any provision of the Constitution of 1875 has been omitted from the Constitution of 1901, it will so appear by a blank in the opposite column for 1901. If any new provision has been inserted in the Constitution of 1901 not in the Constitution of 1875, it will likewise appear by a blank in the column for 1875. By this means the two Constitutions are easily compared and contrasted.

The annotations appear in notes at the bottom of pages and are definitions, explanations and constructions of various Constitutional law writers, such as Judges Tiedeman and Cooley and Story, with extracts from the references to the decisions of the Supreme Court of Alabama and the United States which have construed or discussed the various provisions of the Constitutions or similar provisions of other Constitutions.

At the end follows an analysis or summary of the two Constitutions comparing and contrasting the two, showing the change thus made and with short references to the objects and purposes of the changes, and the conditions which led to the changes.

The index is made as full as practicable to the sections and pages, so that every provision, phrase or word of peculiar importance or significance can be readily found or referred to.

That it may save others in the future of much work and labor in finding any Constitutional provision of law, is the most that the compiler can hope to repay him for his labors in preparing it.

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# CONSTITUTIONS OF ALABAMA OF 1875 AND 1901.

## PARALLELED, ANNOTATED AND INDEXED.

BY JAMES J. MAYFIELD.

1901.

We, the people of the State of Alabama, in order to establish justice, insure domestic tranquillity and secure the blessings of liberty to ourselves and our posterity, invoking the favor and guidance of Almighty God, do ordain and establish the following Constitution and form of government for the State of Alabama:

### ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general and essential principles of liberty and free government

1875.

PREAMBLE.

WE, THE PEOPLE of the State of Alabama, in order to establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure to ourselves and to our posterity life, liberty, and property; profoundly grateful to Almighty God for this inestimable right, and invoking His favor and guidance, do ordain and establish the following Constitution and form of government for the State of Alabama:

### ARTICLE I.

DECLARATION OF RIGHTS.

That the great, general and essential principles of liberty and free government

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The bill of rights is the controlling part of the Constitution.—In re Dorsey, 7 Port., 293.

The bills of rights are intended for the protection of individuals and minorities, they declare the general principles of republican government and declare the fundamental rights of citizens; that all men are by nature free and independent, and have certain inalienable rights, such as the enjoyment of life, liberty and the pursuit of happiness, acquiring, possessing and protecting property and pursuing and obtaining safety and happiness, and the free exercise and enjoyment of religious freedom of worship without discrimination or preference. That every man may freely speak, write and publish his sentiments, and is responsible only for the abuse of the right. That every man may bear arms in defense of himself and State. That people shall be secure in their persons, houses, papers and effects against unreasonable searches and seizures. That soldiers shall not be quartered in the homes of citizens during peace. That no bills of attainder or ex post facto law shall be passed; that jury trial shall be preserved; that excessive bail shall not be required; that unusual and cruel punishment shall not be inflicted; that no person shall be twice put in jeopardy for the same offense; that no person shall be compelled, in a criminal case, to be a witness against himself; that no person shall be deprived of life, liberty or property without due process of law; that private property shall not be taken for public use without just compensation being paid in advance. That all power is inherent in the people, and all free governments are founded on their authority and instituted for their peace, safety, happiness and security; that they have the inalienable and indefeasible right to abolish their form of government as they think proper. That all elections shall be free and equal, that the laws shall not be suspended in times of peace; that representation shall be in propotion to population; that the people shall have the right to assemble and consult freely of the common good, to instruct their representatives, and petition them for redress of grievances.—Cooley Const. Lim., 45, 46.

Rights—

The private and inalienable rights of citizens do not rest upon the mandate of the law as a source, they belong to man in a state of nature; they are natural laws existing under the law of reason.—Tiedeman Lim. Pol. Pow., Sec. 1.

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may be recognized and established, we declare:

SECTION 1. That all men are equally free and independent; that they are endowed by their Creator with certain

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Constitutions Defined—

Mr. Cooley says that "it is easier to tell what is not than to tell what is the object and purpose of a Constitution," it is not the beginning of a community, nor the origin of private rights; it is not the fountain of law nor the incipient state of government; it is not the cause but consequence of personal and political freedom; it grants no rights to the people but is the creature of their power, the instrument of their convenience. Designed for their protection in the enjoyment of the rights and powers which they possessed before the Constitution was made, it is but the frame-work of the political government, and necessarily based upon the pre-existing condition of law, rights, habits and modes of thought. There is nothing primitive in it, it is all derived from a known source. It presupposes an organized society, law, order, property, personal freedom, a love of political liberty, and enough of cultivated intelligence to know how to guard it against the encroachment of tyranny. A written Constitution is, in every instance, a limitation upon the powers of government in the hands of agents, for there was never a written republican constitution which delegated to functionaries all the latent powers which lie dormant in every nation, and are boundless in extent and incapable of definition.—Cooley Const. Lim., 47.

A constitution is the fundamental law of the State, setting forth the principles upon which the government is founded, distributing and regulating the sovereign powers, and the manner in which the powers are to be exercised.—Cooley Const. Lim., 2.

In England, the declared law of Parliament is the final law, and in England a rule prescribed by the law-making authority might be unconstitutional and yet legal and obligatory, but in America the Legislature may enact a law, and yet there is an appeal to the courts, because the Constitution is the final law, and the courts construe it.—Cooley Const. Lim., 4.

"A constitution is a form of government delineated by the mighty hand of the people, in which certain first great principles of fundamental laws are established. The advantages of a written constitution are that the law is certain and fixed, it contains the permanent expressed will of the people, and is, therefore, the supreme law of the land; it is paramount to the power of the Legislature, and can be revoked or amended only by the people who made it. The life-giving principles of the Constitution, and the death-giving stroke must proceed from the same hand—that is, of the people. The Constitution is the work or will of the people in their original sovereign and unlimited capacity. Statute law is the work of the Legislature in its derived and subordinate capacity and powers conferred by the people. The Constitution fixes the limits to the exercise of the legislative authority prescribed, the orbit in which it must move. The Constitution is the great central body, the center of the political system, as the sun is of the solar system, around which all legislative, judicial and executive bodies must revolve, but if one or all of these planets move not within the orbits prescribed or in accordance with the influences, and under the directions and powers of the great central body, wrecks of political system will follow as would the wreck of worlds follow if the planets refused to move within their prescribed orbits."

At the time of the Conquest, there was more than one-half of the Anglo-Saxon race in bondage. They were held as property by the lords and were incapable of holding and acquiring property themselves. This involuntary servitude was never abolished in England by statute, the causes which were silently at work for centuries, they escaped the notice of historians and statesmen, they were not even the subject of agitation or controversy, but fortunately the time arrived when the philanthropist and the jurist could examine the laws and institutions of England and say that slavery did not then exist.—Cooley Const. Lim., 360, 361.

[SEC. 1.]—

The love of liberty is implanted in every human breast, it is guaranteed to all men in all American Constitutions. Liberty is said to consist in "the power to do what we ought to will, and in not being constrained to do what we ought not to will," it should not be confounded with the license to do what one pleases. Spencer has said, "Every man may claim the fullest liberty to exercise his faculties compatible with the possession of like liberty by every other man," but liberty does not consist in a paucity of law, but with the limitation of restricted laws which exercise a wholesome restraint on man, and so far he is protected from injury.—Tiedeman's Lim. Pol. Pow., 66-70.

A guarantee to each citizen of all the rights and privileges enjoyed or possessed by any other citizen.—Ex parte Dorsey, 7 Port., 293.

Free egress from, or transit through the State may be regulated but not prevented.—Joseph v. Randolph, 71 Ala., 499.

The pursuit of happiness is one of the citizens' inalienable rights, but the lines of such pursuit are not unlimited, and statutes regulating and controlling the liquor traffic do not deny an inalienable right guaranteed by the Constitution.—Sheppard v. Dowling, 127 Ala., 11.

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inalienable rights; that among these are life, liberty and the pursuit of happiness.

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inalienable rights; that among these are life, liberty and the pursuit of happiness.

SEC. 2. That all persons resident in this State, born in the United States, or naturalized, or who shall have legally

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[ART. 1, Sec. 2, 1875.]—

Effect is to place all persons, natural and artificial, on a basis of equality in the courts.—S. & N. R. Co. v. Morris, 65 Ala., 193; Smith v. L. & N. R. Co., 75 Ala., 449; L. & N. R. Co. v. Baldwin, 85 Ala., 619; Brown v. A. G. S. R. Co., 87 Ala., 370; Randolph v. B. & P. Supply Co., 106 Ala., 501. See also citations to Art. I., Sec. 14; Art. XIV., Sec. 12, Cons. 1875.

There can be no discriminative advantage bestowed by statute between the parties to the same suit.—S. & N. R. Co. v. Morris, 65 Ala., 193; Randolph v. B. & P. Supply Co., 106 Ala., 501.

The statute against miscegenation is not a denial of equal civil and political rights to the races.—Ford v. State, 53 Ala., 150; Green v. State, 58 Ala., 190 (overruling Burns v. State, 48 Ala., 195); Hoover v. State, 59 Ala., 57; Pace v. State, 69 Ala., 231 (affirmed 106 U. S., 583).

A statute providing that the recorder of a municipal court be learned in the law and a practicing attorney, is void because it denies to the citizens equal civil and political rights.—Kentz v. City of Mobile, 120 Ala., 623.

A provision in an act creating a County Court that the Judge of the County Court should be learned in the law, is void in that it denies equal civil and political rights.—Wilson v. State, 136 Ala., 114; citing Kentz v. Mobile, 120 Ala., 623.

A statute providing that it shall not take effect until the Commissioners ascertain that the removal of the Court House under the act would not require an increased tax rate, held not to suspend the laws in violation of the Constitution.—Hand v. Stapleton, 135 Ala., 156.

This character of legislation has been recognized by the Supreme Court of Alabama in a number of cases.—Jackson v. State, 131 Ala., 21; State v. Crook, 126 Ala., 600; Ex parte Hill, 40 Ala., 121; Clark v. Jack, 60 Ala., 271.

Taxing property of nonresidents higher than that of residents is unauthorized.—Wiley v. Parmer, 14 Ala., 627.

Prohibiting certain trades at certain times and places does not deny equal protection of the law.—Dorman v. State, 34 Ala., 216.

A statute giving liens for attorney's fees in certain cases, providing that they shall be taxed against certain litigants only, denies equal protection of the law.—Randolph v. Builders' Co., 106 Ala., 501; S. & N. Co. v. Morris, 65 Ala., 193.

But statutes providing trial of contest elections without a jury are valid.—Taliaferro v. Lee, 97 Ala., 92.

Statutes prohibiting intermarriage between whites and negroes are valid.—Burns v. State, 48 Ala., 195; Green v. State, 58 Ala., 190.

Statutes prescribing greater punishment for negroes and whites for intermarrying or living in adultery than for negroes or whites with their own color, does not deny equal protection of the law.—Green v. State, 58 Ala., 190; Pace v. State, 69 Ala., 231.

A statute imposing upon defendant the burden of proving the plea of insanity is not a denial of due process of law nor equal protection of the law.—Martin v. State, 119 Ala., 1; Coleman, J., dissenting.

A State is a body politic, or a society of men united together for the purpose of promoting their mutual safety and advantage by the joint force of their combined strength. "Nation" and "State" are frequently spoken of as synonomous terms, but Nation is more synonomous with the people. A State may embrace different nations or peoples, while a nation may sometimes constitute several States.

The term "Nation" is often applied to the United States, which embraces several States. Sovereignty, as applied to States, embraces the absolute power by which the State is governed, and the State is sovereign when this power resides within itself.—Cooley Const. Lim., 1.

The power of the Federal and State Government both exist and are exercised within the same territory, and yet they are separate and distinct sovereignities, acting separate and distinct, each from the other, within their respective spheres.—License cases, 5 How., 504.

A citizen is defined to be a part of the civil State, entitled to all its privileges.—Cooley Const. Lim., 77.

Mr. Blackstone says the allegiance of the citizen is "the tie which binds the subject to the sovereign in return for that protection which the sovereign has for the subject."—1 Bl. Com., 441.

The Federal Constitution denies to the States the right to make treaties, or alliances of confederation with other governments, or to grant letters of marque or reprisal, or to coin money or emit bills of credit, or to make anything but gold and silver coin a tender in payment of debts; or to levy or lay imposts or duties upon imports or exports, except what are necessary for the execution of its laws. No State shall lay any duty or tonnage, keep troops or ships of war in times of peace, or engage in war, unless actually invaded, or in imminent danger which will not justify delay. No State shall pass any bill of attainder, ex post facto law, and shall not impair the obligation of contracts, and shall not abridge the privileges and immunities of citizens of the United States,

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SEC. 2. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that, therefore, they have at all times an inalienable and indefeasible right to change their form of government in such manner as they may deem expedient.

SEC. 3. That no religion shall be established by law; that no preference shall be given by law to any religious

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declared their intention to become citizens of the United States, are hereby declared citizens of the State of Alabama, possessing equal civil and political rights.

SEC. 3. That all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit; and that therefore they have, at all times, an inalienable and indefeasible right to change their form of government, in such manner as they may deem expedient.

SEC. 4. That no religion shall be established by law; that no preference shall be given by law to any religious

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that it shall not deprive any person of life, liberty or property without due process of law, nor to deny to any person within its jurisdiction the equal protection of its laws, and shall make no discrimination in the right of suffrage on account of race, color or previous condition of servitude. The Federal Constitution provides that fugitives from justice fleeing to another State shall be delivered up to the State whose laws they have violated. Each State is required to give full faith and credit to the public acts and records of judicial proceedings of every other State, and it also requires that every State shall maintain a Republican form of government, which is guaranteed to the citizens by the United States. It prohibits any State from granting any title of nobility, which is intended to prevent aristocracy and monarchal innovations. Where powers are conferred upon the Federal Government the exercise of the same power is prima facie prohibited, and especially so if the exercise of the power by the State would defeat the Federal Government in its exercise. The State cannot tax the agencies or lands of the general government, and if jurisdiction is given to the Federal Court, it may be made exclusive, but as to other subjects, such as bankruptcy, laws regulating State militia, or counterfeiting, while they are subjects within the Federal power, the State may regulate them, provided the regulation does not conflict with the Federal law.—Cooley Const. Lim., 20-26.

A State can exercise any sovereign power not prohibited by its own or the Federal Constitution. The United States can exercise no powers except those conferred or authorized by the Federal Constitution.

[SEC. 2.]—

The theory of our republican form of government and political system is that the ultimate sovereignity resides in the people, from whom springs all legitimate authority.—Minor v. Happersett, 21 Wall., 162.

The people created the Federal Government and conferred upon it powers of sovereignity over certain subjects, and the people of the respective States created the State Constitution and government to exercise the assumption of sovereign powers, so far as they were willing to allow them to be exercised at all. The sovereignity of the State is vested in the people, but practically the people here includes only those vested with the exercise of the elective franchise. The people, for political purposes, cannot be considered as synonymous with qualified voters.—Blair v. Rigley, 41 Mo., 63.

The maxim that "government rests upon the consent of the Governor" is subject to this exception, "certain classes have been expressly excluded from the right to exercise the elective franchise; the woman, because she was supposed to be under the influence of her husband, infants and idiots and lunatics, and felons, because wanting in intelligence or freedom or liberty to exercise the right, or because they lack intelligence or virtue."—Cooley Const. Lim., 37, 38.

The elective franchise is a privilege rather than a right.—Washington v. State, 75 Ala., 582.

[SEC. 3.]—

The Sunday laws are justified upon two grounds, one upon the same ground which justifies those against profanity, and upon the other ground that one day in seven is needful to recuperate the exhausted energies of mind and body; that it is justifiable as a police regulation, or health laws.—Cooley Const. Lim., 590; Frolickstein v. Mayor of Mobile, 40 Ala., 725; Specht v. Commonwealth, 8 Penn. St., 312; State v. Bott, 31 La., 662: s.c., 33 Am. Rep., 224; State v. Baltimore & Ohio R. R. Co., 15 W. Va., 362; s. c., 36 Am. Rep., 803; State v. Common Pleas, 36 N. J., 72; s.c., 13 Am. Rep., 422.

Blasphemy is speaking evil of the Deity with intent to derogate from the Divine Majesty, and to alienate others from the love and reverence of God. Blasphemy is to God what calumny is to man, it tends to lessen reverence and to prevent the people having confidence in him.—Commonwealth v. Kneeland, 20 Pick., 206.

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sect, society, denomination or mode of worship; that no one shall be compelled by law to attend any place of worship; nor to pay any tithes, taxes or other rate for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

SEC. 4. That no law shall ever be passed to curtail or restrain the liberty of

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sect, society, denomination, or mode of worship; that no one shall be compelled by law to attend any place of worship, nor to pay any tithes, taxes, or other rate, for building or repairing any place of worship, or for maintaining any minister or ministry; that no religious test shall be required as a qualification to any office or public trust under this State; and that the civil rights, privileges and capacities of any citizen shall not be in any manner affected by his religious principles.

SEC. 5. That any citizen may speak, write and publish his sentiments on all

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Sunday, as a religious institution, can receive no legal recognition, we secured it as a sanitary regulation, it benefits the individual; it has also been held to be the law of nature; that the physical condition of the individual needs this rest. It is said that those who most need cessation from labor would be unable to take it but for this law; that the feverish desire to acquire wealth and the greed and avarice of capital must be restrained. As judge Field said, in Ex parte Newman, 9 Cal., 502. "Labor is necessarily imposed as a condition of our race, and to protect labor is the highest office of our law."

A law is invalid which gives to one religious denomination a privilege which is not enjoyed equally by all other denominations.—Shreveport v. Levy, 27 La., 671; Cooley Const. Law., 469.

Religion is distinguishable from morality The municipal law exacts obedience to the moral law. A law which would force the use of the Bible and the Koran, or any other religious books upon an unwilling pupil or patron, would be unconstitutional.—Tiedeman's Lim. Pol. Pow., 163.

While the State law knows no church or denomination or religion, it does foster and encourage religious instinct and habits. Civil courts deal with civil rights and ecclesiastical courts with ecclesiastical rights. Church order and discipline can be enforced only in ecclesiastical courts. The property of the church will be protected by the civil courts.—Watson v. Jones, 13 Wall., 679; Grosvenor v. United Society, 118 Mass., 78; Baptist Church v. Wetherell. 3 Paige, 301.

"Christianity is a part of the common law of the State in a qualified sense—that is, its divine origin and birth are admitted; and, therefore, it is not to be maliciously and openly reviled and blasphemed against to the annoyance of believers and the injury of the public."—Vidal v. Girard's, Exec., 2 How., 127.

A Jew has no constitutional right to work on Sunday.—Frolickstein v. Mayor, 40 Ala., 725. See 76 Ala., 89; 59 Ala., 64; 53 Ala., 481; 50 Ala., 159; 22 L. R. A., 721; 58 Am. Rep., 772.

[SEC. 4.]—

Gaithers' Case, 102 Ala., 458; Wofford v. Meeks, 129 Ala., 349; Crudup's case, 85 Ala., 520; 15 Am. St. Rep., 333-343; 49 L. R. A., 612.

It is the liberty of speech and of the press which is preserved and not its licentiousness and tendency to publish sensational and false stories, nor that which appeals to passion, which is done to incite others to the commission of crimes, such as appeals to dynamiters, socialists and nihilists, and discontents, who believe the world is fashioned wrong and they must right it, who are not included within the meaning of the freedom of speech and of the press.—Tiedeman's Lim. Pol. Pow., 190.

At common law it was an indictable libel to publish anything against the Constitution of the country, or the established form of government. The law allowed a temperate and calm discussion of public events and measures, but if the publication went beyond this, intended to excite tumult, it became criminal.—Regina v. Collins, 9 C. & P., 456; Cooley Const. Lim., 528.

In the case of Res Publica v. Dennie, 4 Yeates, 267; S.C., 2 Am. Dec., 402, the defendant was indicted in 1805 for publishing the following in a newspaper: "A democracy is scarcely tolerated at any period of national history. Its omens are always sinister, and its powers are unpropitious. With all the lights of experience blazing before our eyes, it is impossible not to discover the futility of this form of government. It was weak and wicked at Athens, it was bad in Sparta, and worse in Rome. It has been tried in France and terminated in despotism. It was tried in England and rejected with the utmost loathing and abhorrence. It is on its trial here, and its issue will be civil war, desolation and anarchy. No wise man but discerns its imperfections; no good man but shudders at its miseries; no

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speech or of the press; and any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

SEC. 5. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizure or

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subjects, being responsible for the abuse of that liberty.

SEC. 6. That the people shall be secure in their persons, houses, papers and possessions from unreasonable seizure or

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honest man but proclaims its fraud, and no brave man but draws his sword against its force. The institution of a scheme of polity so radically contemptible and vicious is a memorable example of what the villainy of some men can devise, the folly of others receive and both establish in spite of reason, reflection and sensation."

Held, that whether libel or not depended upon intent of defendant in publishing.

Temperate criticism of public officers and their actions, character and motive is allowable and legitimate, and great latitude is allowed so long as good faith inspires the communication. It is through the ballot-box that the elector condemns or approves those who ask his suffrage. Whether the public have a right to vote for an officer or not, they have a right to be heard on the question of their selection, and they have a right to ask for their dismissal and right to complain of the official conduct, a right to petition for redress of grievances. A petition signed by a part of the citizens of New York, asking for the removal of the District Attorney, charging that he was prostituting the office to private purposes, was held to be privileged; to support an action for libel, the plaintiff must show that it was malicious and groundless and presented for the purpose of injuring his character.—Thorn v. Blanchard, 5 Johns., 508

The term, "privileged communications," is applied to two classes: (1st) Those which, by reason of State policy, the law will not suffer to be foundation of civil suits; (2d) those in which the circumstances under which uttered rebut the legal inference of malice. The first class is absolutely privileged, the second is conditionally privileged. Embraced in the second class are cases where communication is made between persons closely related being related in the relation of confidence, and the statement is to the third party and also embraces cases where inquiry is made as to the character, credit, etc., of third parties.—Cooley Const. Lim., 526, 527.

[SEC. 5.]—

Search-warrants are not allowed for the purpose of obtaining evidence, but they should be allowed only after the evidence has been obtained. There are exceptions to this rule, a few specific cases where that which is the subject of the crime is supposed to be concealed and the public has an interest in finding it and destroying it. Such as searches for stolen goods or for smuggled goods in violation of revenue law, or implements for gaming, counterfeiting, lottery tickets, liquors made in violation of revenue law or sold in violation of prohibition law, obscene books and papers or explosives, injurious materials, etc., but it is oftentimes better that crimes should go unpunished than that citizens should be liable to have their premises invaded, their private books and papers exposed or destroyed at the hands of ignorant and suspicious men, under the direction of ministerial officers who may bring such persons as he pleases and who selects them on account of their physical courage rather than their sensitive regard for the rights or feelings of other people.—Cooley Const. Lim., 372.

The common law maxim, "every man's house is his castle" is guaranteed by the Constitutional provision of "the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures," and that "no warrant shall issue except upon probable cause, supported by oath or affirmation, describing the place to be searched and the person or things to be seized." It was said by Lord Chatham that "The poorest man in his cottage may bid defiance to all the forces of the crown; it may be frail; its roof may shake; the wind may blow through it; the storm may enter; the rain may enter, but the king may not enter, and all his forces dare not cross the threshold of the ruined tenement."

A search-warrant must be issued only by a court of competent jurisdiction, it must be issued to the officer of the law, and not to the aggrieved party; it can be granted only upon probable cause, supported by oath or affirmation, and the warrant must describe the premises and the person or things to be taken. —Bishop Crim. Proc., 240-246; Tiedeman's Lim. Pol. Pow., 462.

"To enter a man's house by virtue of a warrant in order to procure evidence against him is worse than Spanish Inquisition—a law under which no Englishman would wish to live an hour," said Lord Camden. Search warrants may be issued for the release of females in houses of ill-fame, for the recovery of children enticed away from their parents, and for the unlawful detention of any person. When it is to search for a person, suffering from dangerous or infectious disease, the warrant can be issued in aid of civil process. The service of the warrant or process is subject to the limitation that the officer cannot break open the outer door, but may break open the inner door, if necessary for the service of process.—People v. Hubbard, 24 Wend., 369; Isley v. Nicholds, 12 Pick., 270.

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searches, and that no warrants shall issue to search any place or to seize any person or thing without probable cause, supported by oath or affirmation.

SEC. 6. That in all criminal prosecutions, the accused has a right to be heard by himself and counsel, or either; to

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searches, and that no warrant shall issue to search any place, or to seize any person or thing, without probable cause, supported by oath or affirmation.

SEC. 7. That in all criminal prosecutions the accused has a right to be heard by himself and counsel, or either; to

Extent of authority to search the person of a prisoner, discussed in Ex parte Hurn, 92 Ala., 102; Cunningham v. Baker, 104 Ala., 160.

Forbids the issuance of a warrant without probable cause, and then on oath or affirmation; but arrest may be made without warrant.—Williams v. State, 44 Ala., 41; Johnson v. State, 82 Ala., 29; Cunningham v. Baker, 104 Ala., 160.

Statute providing for the arrest of a convict who has been paroled by the Governor, and who has violated the conditions of his parole, is not violative of this provision.—Fuller v. State, 122 Ala., 32.

[SEC. 6.]—

The trial of the accused, in order to be "due process of law," must be conducted in accordance with the established rules of practice, and the law of evidence and pleading, and this trial must be speedy, as a rule, at the next term of court after the commission of the crime; there are exceptions to this last provision, continuances to some extent are left to the good faith and discretion of the prosecuting attorney, guarded by the court in behalf of the prisoner. The trial must be public, but this does not mean that every person has a constitutional right to attend every trial, nor does it mean that the press have carte blanche for the publication of proceedings of criminal courts; this would allow a mass of moral filth in the form of reports of criminal cases which would render daily papers indecent and unfit for the reading of the youths of the land.—Tiedeman's Lim. Pol. Pow., 87-89.

The accused is entitled to counsel of his own appointment, if able to obtain it, and if not, it is within the power and it is the duty of the court to appoint counsel to defend those unable to employ, and no attorney, without just cause or legal excuse, should refuse to perform.—Wayne Co. v. Waller, 90 Pa., 99; (35 Am. Rep., 636.)

Trial by jury, unexplained, means the common law trial, and if at common law the court could try without a jury for a given offense, a jury is not now required. Whether the Legislature could abolish jury trial in the absence of a constitutional guarantee is a judicial question; it is not certain that a constitutional guarantee is necessary to secure a jury trial.—Tiedeman's Lim. Pol. Pow., 95.

The accused is entitled to be confronted by the witnesses against him. There are a few exceptions to this rule, which result from necessity; one of these is, where a witness has testified on a former trial of the case for the same offense and has since died or is absent from the State, insane, or too ill to testify, or has been summoned and kept away by the accused, it is competent for the State to prove the testimony of such witness on the former trial. Dying declarations of the deceased in homicide cases is another exception to this rule.—Davis v. State, 17 Ala., 354; Finch's case, 81 Ala., 41.

Judicial trial is due process of law.—Dorman v. State, 34 Ala., 216.

So is a statute prohibiting distillation of grain.—Ingram v. State, 39 Ala., 247.

Regulating sale of fertilizers.—Steiner v. Ray, 84 Ala., 93.

Sale of lands belonging to minors.—84 Ala., 197; 113 Ala., 148; 117 Ala., 454.

Compensation to owner for private property taken.—166 U. S., 226; 45 Ala., 310, 322; Drake's case, 102 Ala., 501.

Implies right to be present before tribunal, to be heard by testimony, to controvert by proof.—Zeigler v. S. & N. R. Co., 58 Ala., 594.

Absolute liability imposed upon corporations for injuries done violates it.—Zeigler's case, 58 Ala., 594.

Require railroads to pay costs of examining employes violates it.—Baldwin's case, 85 Ala., 619.

Requiring abutting property owners to pave streets does not violate it.—Birdsong's case, 126 Ala., 632; Klein's case, 89 Ala., 461.

A statute providing that actions shall not be tried at first term of court is valid—Ex parte Pollard, 40 Ala., 77.

A statute providing that a defendant in execution may supersede the execution upon a mere suggestion, without any judicial determination as to the truthfulness of the suggestion is not due process of law.—Ashurst v. Phillips, 43 Ala., 158.

An act authorizing executors, guardians, trustees, etc., to invest trust funds in Confederate bonds held void.—Houston v. De Loach, 43 Ala., 364; Powell v. Boon, 43 Ala., 459; 43 Ala., 488; 43 Ala., 626.

A statute providing for the impounding of cattle, taken damage feasant, is a valid police regulation.—Dillard v. Webb, 55 Ala., 468.

A statute preventing the sale or removal of seed cotton, after sunset and before sunrise of succeeding day, is a valid police regulation.—Davis v. State, 68 Ala., 58.

Statutes requiring inspection and tagging of fertilizers are valid.—Steiner v. Ray, 84 Ala., 93.

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demand the nature and cause of the accusation; and to have a copy thereof; to be confronted by the witnesses against

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demand the nature and cause of the accusation; to have a copy thereof; to be confronted by the witnesses against

Statutes requiring railroads to put in cattle guards and to fence their tracks are valid.—Birmingham Co. v. Parsons, 100 Ala., 662.

Ordinance establishing markets and prohibiting sale outside thereof are valid.—Ex parte Byrd, 84 Ala., 17.

A statute making railroads liable for killing stock, without reference to negligence, is not due process of law.—Zeigler v. S. & N. R. Co., 58 Ala., 594; S. & N. R. Co. v. Morris, 65 Ala., 193 [Clark v. A. G. S. R. Co., 126 Ala., 141 seems to conflict with these cases, though it may be said to be dictum].

And statutes requiring railroad employes to be examined for color blindness are due process of law.—L. & N. R. Co. v. Baldwin, 85 Ala., 619.

A statute requiring the deposit of double the amount of purchase money to redeem from tax sale held void.—Stoudenmire v. Brown, 48 Ala., 699.

Statutes making tax deeds conclusive evidence of title are void.—Stoudenmire v. Brown, 48 Ala., 699; Calhoun v. Fletcher, 63 Ala., 574.

A statute prohibiting an action of trover till criminal prosecution had for stolen property, held not to deny due process of law.—Martin v. Martin, 25 Ala., 201.

A statute authorizing personal judgments against nonresidents without personal service held valid.—Betancourt v. Eberlin, 71 Ala., 461; [Bank of Spokane v. Clements, 109 Ala., 270, limits and distinguishes this case].

A statute removing an administration from one county to another is not void.—Wright v. Ware, 50 Ala., 549.

A statute authorizing Supreme Court to render summary judgments held valid.—Johnston v. Atwood, 2 Stew., 225.

A statute giving Justice of the Peace final jurisdiction without right of appeal held not to be due process of law.—Tims v. State, 26 Ala., 165; Ex parte Haughton, 38 Ala., 570.

But if the general law will authorize an appeal in such cases, it is valid.—Thomas v. Bibb, 44 Ala., 721.

A statute giving a mechanics' lien which provided for enforcement without notice to the owner was held to deprive him of his property without due process of law, and to be therefore void.—Selma Co. v. Stoddard, 116 Ala., 251.

The provision of the Federal Constitution, that full faith and credit shall be given in each State to the public acts and records of others, does not apply to judgments rendered by the court of one State against a nonresident debtor in the absence of personal service.—L. &. N. R. Co. v. Nash, 118 Ala., 477.

A statute imposing upon defendants the burden of proving the plea of insanity is not a denial of due process of law, nor equal protection of the law.—Martin v. State, 119 Ala., 1; Coleman, J., dissenting.

The abolition by the Legislature of an office created by it is not the taking of property from the incumbent thereof without due process of law.—Hawkins v. Roberts, 122 Ala., 130.

An office is not property.—Ib., Ex parte Lusk, 82 Ala., 519; Ex parte Lambert, 52 Ala., 70.

RIGHT OF ACCUSED TO BE HEARD BY HIMSELF AND COUNSEL, OR EITHER. A guaranty of the right to be present whenever any action is taken by the prosecution, except a continuance when the accused fails to appear, and the like orders, lying in the discretion of the court.—Ex parte Bryan, 44 Ala., 402; Slocovitch v. State, 46 Ala., 227; and when the verdict is rendered.—State v. Hughes, 2 Ala., 102.

Applies to "Mayor's Court."—Withers v. State, 36 Ala., 252.

But not to contempt proceedings.—Ex parte Hamilton, 51 Ala., 66.

Does not authorize the accused to make a statement of facts outside of the evidence.—State v. McCall, 4 Ala., 643.

The court may limit argument of counsel.—Yeldell v. State, 100 Ala., 26; Peagler v. State, 110 Ala., 11.

To demand the nature and cause of the accusation; to have a copy thereof. Copy is waived if not applied for.—Driskill v. State, 45 Ala., 21; Miller v. State, 45 Ala., 24.

Copy from a certified transcript, after change of venue, sufficient.—Bramlett v. State, 31 Ala., 376.

Sufficiency of Code forms of indictment to meet requirements of provision, see Burdine v. State, 25 Ala., 60; Thompson v. State, Ib. 41; Elam v. State, 25 Ala., 53; Sherrod v. State, Ib. 78; Salomon v. State, 27 Ala., 26; Molett v. State, 33 Ala., 408; Aiken v. State, 35 Ala., 399; Schwartz v. State, 37 Ala., 460; Frank v. State, 40 Ala., 12; Billingslea v. State, 68 Ala., 486; Williams v. State, 68 Ala., 551; 106 U. S., 583; Peterson v. State, 74 Ala., 34; Bogan v. State, 84 Ala., 449; Freiburg v. State, 94 Ala., 91; Thompson v. State, 99 Ala., 173; Smith v. State, 103 Ala., 57.

To be confronted by the witnesses against him. Applies only to courts where facts are inquired into; not to the Supreme Court.—Phleming v. State, Minor, 42.

Applies to impeachments.—State v. Buckley, 54 Ala., 599.

Showing of what an absent witness for the State would testify to is inadmissible, without the consent of the defendant; right may be waived.—Rosenbaum v. State, 33 Ala., 354; Wills v. State, 73 Ala., 362.

Where a witness, examined in a former proceeding between the parties, dies, becomes insane, or leaves the State, his former testimony

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him; to have compulsory process for obtaining witnesses in his favor; to testify in all cases, in his own behalf, if he

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him; to have compulsory process for obtaining witnesses in his favor; and, in all prosecutions by indictment, a speedy pub-

may be proven.—Long v. Davis, 18 Ala., 801; Marler v. State, 67 Ala., 55; Lowe v. State, 86 Ala., 47; South v. State, 86 Ala., 617; Pruitt v. State, 92 Ala., 41; Thompson v. State, 106 Ala., 67.

Dying declarations are excepted.—Green v. State, 66 Ala., 40.

In all prosecutions by indictment, a speedy public trial, etc. What is a speedy trial.—Ex parte State, 76 Ala., 482.

Jury must consist of twelve men.—Collins v. State, 88 Ala., 212.

But may be waived in misdemeanor cases.—Connelly v. State, 60 Ala., 89.

Must be impartial; opinions as to guilt or innocence of accused. The right in the manner of its exercise is in the discretion of the court.—Peagler v. State, 110 Ala., 11.

In criminal prosecutions before a jury the defendant must be heard, but the court may regulate the exercise of the right.—Crawford v. State, 112 Ala., 1; Yeldell v. State, 100 Ala., 26.

Each case must be governed by its circumstances.—Crawford v. State, 112 Ala., 1.

A violation of the right must be shown, it cannot be presumed.—Crawford v. State, 112 Ala., 1.

To entitle an accused to compulsory process for witnesses, he may be required to make a showing of what he expects to prove by absent witnesses and that witnesses are within jurisdiction of court.—Walker v. State, 117 Ala., 85.

The rule of practice as to continuances cannot be so applied as to defeat the right of defendant to have compulsory process for witnesses in his favor.—Walker v. State, 117 Ala., 85; Bales v. State, 63 Ala., 30; Jackson v. State, 77 Ala., 18; Dean v. State, 89 Ala., 46; Hamill v. State, 90 Ala., 577.

Defendant cannot be put on trial under an indictment where the only provision for a jury is that one may be secured on giving bond and appealing.—Collins v. State, 88 Ala., 212; Reeves v. State, 96 Ala., 33.

Does not apply to contempt cases, impeachment, nor unless the prosecution is by indictment.—Tims v. State, 26 Ala., 165; Ex parte Hamilton, 51 Ala., 66; State v. Buckley, 54 Ala., 599.

A law giving jurisdiction to either county of an offense committed within a quarter of a mile of the border line, does not violate Constitution.—Hill v. State, 43 Ala., 335; Grogan v. State, 44 Ala., 9; Jackson v. State, 90 Ala., 590; Taylor v. State, 131 Ala., 36.

Accused shall not be compelled to give evidence against himself. Accused cannot be compelled to say or do anything that may tend to criminate him, and his refusal cannot be proven as a circumstance against him.—Kelly v. State, 72 Ala., 244; Cooper v. State, 86 Ala., 610; Davis v. State, 131 Ala., 10.

Nor be deprived of life, liberty, or property, but by due process of law. What is due process.—Ex parte Candee, 48 Ala., 386; Zeigler v. S. & N. R. Co., 58 Ala., 594.

Record must show due process in a criminal case.—Hood v. State, 44 Ala., 81.

Persons affected must have due notice of judicial proceedings.—Wilburn v. McCalley, 63 Ala., 436; Mead v. Larkin, 66 Ala., 87; Betancourt v. Eberlin, 71 Ala., 461.

Not contravened by law prohibiting the sale of intoxicants within limited district.—Dorman v. State, 34 Ala., 216; Barnes v. State, 49 Ala., 342.

Nor the taking of private property for public use; but Legislature cannot convert a private into a public use.—Sadler v. Langham, 34 Ala., 311.

Nor prohibiting the distillation of grain without the consent of the Governor.—Ingram v. State, 39 Ala., 247.

Nor removing administration from the county of the decedent's residence.—Wright v. Ware, 50 Ala., 549.

Nor establishing stock districts and pounds.—Dillard v. Webb, 55 Ala., 468.

Nor special private statute for the disposal of property of deceased by administrator.—Chappell v. Williamson, 49 Ala., 153; Todd v. Flournoy, 56 Ala., 99; Watson v. Oates, 58 Ala., 647; Tindal v. Drake, 60 Ala., 170; Bruce v. Bradshaw, 69 Ala., 360; Munford v. Pearce, 70 Ala., 452; (since the adoption of the Constitutions of 1875 and 1901. Quaere. Art. IV, Sec. 23).

Nor prohibiting the sale or removal of cotton in the seed at certain times, and in particular localities.—Davis v. State, 68 Ala., 58; Mangan v. State, 76 Ala., 60.

Nor exempting the State from making affidavit and giving bond in attachment.—Ex parte Macdonald, 76 Ala., 603.

Nor requiring examination and license of locomotive engineers. McDonald v. State, 81 Ala., 279.

VIOLATED IN FOLLOWING CASES.

Contravened by law authorizing toll-gate to be thrown open if road out of repair.—Powell v. Sammons, 31 Ala., 552.

Making tax deed conclusive, instead of prima facia evidence.—Stoudenmire v. Brown, 48 Ala., 699; S. C., 57 Ala., 481; Davis v. Minge, 56 Ala., 121; Calhoun v. Fletcher, 63 Ala., 574; Lassiter v. Lee, 68 Ala., 287.

Requiring deposit of money before prosecution or defense of suit by or against purchaser at tax sale.—Stoudenmire v. Brown, 48 Ala., 699; Whitworth v. Anderson, 54 Ala., 33; Lassiter v. Lee, 68 Ala., 287.

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elects so to do; and, in all prosecutions by indictment, a speedy, public trial, by an impartial jury of the county or district in which the offense was committed; and he shall not be compelled to give evidence against himself, nor be deprived of life, liberty or property, except by due process of law; but the Legislature may, by a general law, provide for a change of venue at the instance of the defendant in all prosecutions by indictment, and such change of venue, on application of the defendant, may be heard and determined without the personal presence of the defendant so applying therefor; provided, that at the time of the application for the change of venue, the defendant is imprisoned in jail or some legal place of confinement.

SEC. 7. That no person shall be accused or arrested, or detained, except in cases ascertained by law, and according to the form which the same has prescribed; and no person shall be punished

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lic trial by an impartial jury of the county or district in which the offense was committed; and that he shall not be compelled to give evidence against himself, nor be deprived of his life, liberty, or property, but by due process of law.

SEC. 8. That no person shall be accused, or arrested, or detained, except in cases ascertained by law, and according to the forms which the same has prescribed; and no person shall be punished,

Taxing an attorney's fee as costs against railroad in certain cases.—S. & N. R. Co. v. Morris, 65 Ala., 193.

Giving filer of mechanic's lien a lien also for an attorney's fee.—Randolph v. B. & P. Sup. Co., 106 Ala., 501.

Imposing absolute liability on railroad for cattle killed by it under certain conditions.—Zeigler v. S. & N. R. Co., 58 Ala., 594; B. M. R. Co. v. Parsons, 100 Ala., 662.

Requiring railroad to pay a fee for the examination of its employes for color-blindness.—L. & N. R. Co. v. Baldwin, 85 Ala., 619.

Declaring conveyances already executed void because not acknowledged according to a then prescribed form.—Ala. L. I. & T. Co. v. Boykin, 38 Ala., 510.

An act which provides that a defendant must give an appearance bond to a subsequent term of court before he can secure the right of trial by jury is not violative of this provision.—Howard v. State, 128 Ala., 43.

No convenience of the court nor condition of the docket will authorize the denial of the right of accused to compulsory process for witnesses.—Walker v. State, 117 Ala., 85.

The State should not be allowed to prove that accused declined to have his shoes taken for the purpose of comparing them with certain tracks.—Davis v. State, 131 Ala., 10, citing Cooper v. State, 86 Ala., 610; 4 L. R. A., 766; 11 Am. St. Rep., 84; Potter v. State, 92 Ala., 37; Chastang v. State, 83 Ala., 29.

But where a statement is made to accused implying his guilt, his omission to controvert, or explain may afford an inference of its truth, if he can make the denial.—Davis v. State, 131 Ala., 10; Avery v. State, 124 Ala., 20; Lawson v. State, 20 Ala., 65; 56 Am. Dec., 182; Huggins v. State, 41 Ala., 393; Jackson v. State, 54 Ala., 234.

[SEC. 7.]—

The Code form of an indictment for perjury is sufficient.—Smith v. State, 103 Ala., 57; Walker v. State, 96 Ala., 53.

Indictment under Code form for embezzlement is sufficient.—Lang v. State, 97 Ala., 41; Reeves v. State, 95 Ala., 31; Huffman v. State, 89 Ala., 33.

Indictment under Code form for compounding felony is sufficient.—Watt v. State, 97 Ala., 72.

An indictment for betting at cards or dice under Code form is sufficient.—Rosson v. State, 92 Ala., 76.

Code form of indictment for selling liquor without license is sufficient.—Williams v. State, 91 Ala., 14.

Code form of indictment for miscegenation is sufficient.—Linton v. State, 88 Ala., 216.

Code form of indictment for abuse of child is sufficient.—McGuff v. State, 88 Ala., 147.

Indictment for keeping gaming table is sufficient.—Bibb v. State, 83 Ala., 84.

Indictment for arson held sufficient.—Sands v. State, 80 Ala., 201.

Indictment for gaming held sufficient.—Johnson v. State, 75 Ala., 7.

Indictment for adultery discussed.—Pace v. State, 69 Ala., 231.

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but by virtue of a law established and promulgated prior to the offense and legally applied.

SEC. 8. That no person shall, for any indictable offense, be proceeded against criminally, by information, except in cases arising in the militia and volunteer forces when in actual service, or when assembled under arms as a military organization, or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in the Constitution; provided, that in cases of misdemeanor, the Legislature may by law dispense with a Grand Jury and authorize such prosecutions

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but by virtue of a law established and promulgated prior to the offense, and legally applied.

SEC. 9. That no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the militia and volunteer forces when in actual service, or, by leave of the court, for misfeasance, misdemeanor, extortion and oppression in office, otherwise than is provided in this Constitution. *Provided,* that in cases of petit larceny, assault, assault and battery, affray, unlawful assemblies, vagrancy, and other misdemeanors, the General Assembly may, by law, dispense with a

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Indictment for selling or removing property covered by a lien held sufficient.—Ellerson v. State, 69 Ala., 1.

Indictment for murder held sufficient.—Phillips v. State, 68 Ala., 469; Noles v. State, 24 Ala., 672.

Indictment for disturbing females at public assembly discussed.—Smith v. State, 63 Ala., 55.

Indictment against overseer of public road discussed.—McCullough v. State, 63 Ala., 75.

Indictment for slander of female held sufficient.—Haley v. State, 63 Ala., 89.

Indictment for selling liquor to intemperate held sufficient.—Tatum v. State, 63 Ala., 147.

Indictment for selling liquor to minor held sufficient.—Spigener v. State, 62 Ala., 383.

Indictment for obtaining money under false pretense sufficient.—Sandy v. State, 60 Ala., 58.

An indictment for assault with intent to ravish held sufficient.—Bradford v. State, 54 Ala., 230.

An indictment for murder, endorsements and record of, discussed.—Wesley v. State, 52 Ala., 182.

An indictment for arson held sufficient.—Miller v. State, 45 Ala., 24.

The form of indictment No. 79, Crim. Code, P. 335, for illegal sale of liquor, and sec. 5007 of the Code (1896) do not deny the defendant the right to demand the nature and cause of the accusation.—Jones v. State, 136 Ala., 118.

Under the practice in this State, the defendant has no constitutional or other right to demand a bill of particulars in a criminal case other than is afforded by sufficient indictment, affidavit or warrant, charging the offense.—Jones v. State, 136 Ala., 118.

What are ex post facto laws.—Calder v. Bull, 3 Dall. (U. S.), 390; Fletcher v. Peck, 6 Cranch (U. S.) 138.

Law directing nol. pros., and another indictment, when it is seen there will be a variance, is constitutional.—State v. Kreps, 8 Ala., 951.

Law must be promulgated prior to the offense.—Aaron v. State, 39 Ala., 684; Eliza v. State, 39 Ala., 693.

Unauthorized discharge of the jury after rendering a void verdict, is not a legal application of the law, and is an acquittal.—Grogan v. State, 44 Ala., 9; Bell v. State, 48 Ala., 684.

When a jury is sworn and the trial entered upon, jeopardy has begun and the discharge of the jury without proper ground is equivalent to an acquittal.—Hayes v. State, 107 Ala., 1.

The Legislature may fix the venue in either of two counties where an offense is within a quarter of a mile of the dividing line.—Taylor v. State, 131 Ala., 36; Jackson v. State, 90 Ala., 590; McKay v. State, 110 Ala., 19.

A void verdict may be tantamount to an acquittal—Hays v. State, 107 Ala., 1; Jackson v. State, 102 Ala., 76; Jones v. State, 97 Ala., 77.

A statute depriving a citizen of rights for past misconduct is void.—Cummings v. Mo., 4 Wall., 325; Burgess' case, 97 U S., 385; Hawker v. N. Y., 170 U. S., 196.

[SEC. 8.]—

A guaranty of the right to demand an indictment in all but the excepted cases.—State v. Middleton, 5 Port., 484; Noles v. State, 24 Ala., 672; Thompson v. State, 25 Ala., 41.

No restraint on the mode of drawing and summoning grand jurors.—Williams v. State, 61 Ala., 33.

Trial in excepted cases may be had before justices and without a jury.—Connelly v. State, 60 Ala., 89; Ex parte Brown, 63 Ala., 187.

And in these cases the complaint need not conclude "against the peace, etc."—Thomas v. State, 107 Ala., 61; Simpson v. State, 111 Ala., 6.

Law giving punitive damages in a civil action does not violate.—R. & D. R. Co. v. Freeman, 97 Ala., 289.

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SEC. 10. That no person shall, for the

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The constitutional right of trial by jury is sufficiently guarded by an act which gives defendants an option to be tried in one court without a jury or to be tried in another by jury.—Lewis v. State, 123 Ala., 84.

Trial for misdemeanor begun by affidavit and warrant in County Court may be tried in Circuit Court without indictment.—Witt v. State, 130 Ala., 129.

The Legislature may authorize the trial of misdemeanors without indictment; the rule is different from the Constitutions prior to that of 1865.—Witt v. State, 130 Ala., 129; Thomas v. State, 107 Ala., 61.

[SEC. 9.]—

When jeopardy begins.—Grogan v. State, 44 Ala., 1.

A single crime cannot be sub-divided into two or more offenses.—Ben v. State, 22 Ala., 9; Moore v. State, 71 Ala., 307; Hurst v. State, 86 Ala., 604.

A person has not been in jeopardy, when judgment was arrested on account of a defective indictment, or indictment quashed.—State v. Phil, 1 Stew., 31; Weston v. State, 63 Ala., 155.

Nor when informal verdict set aside, or case is reversed, and new trial granted.—State v. Slack, 6 Ala., 676; State v. Hughes, 2 Ala., 102; Cobia v. State, 16 Ala., 781; Turner v. State, 40 Ala., 21; Waller v. State, 40 Ala., 325; Jeffries v. State, 40 Ala., 381; Kendall v. State, 65 Ala., 492; Morrisette v. State, 77 Ala., 71.

Nor when a part of the sentence under a former conviction has been served.—Jeffries v. State, 40 Ala., 381.

Nor when a judge withdraws from the bench.—State v. Abram, 4 Ala., 272.

Or becomes sick and unable to proceed with the trial.—Nugent v. State, 4 S. & P., 72.

Nor where nol. pros. is entered on account of a variance.—State v. Kreps, 8 Ala., 951.

Nor where former prosecution was based on a void warrant.—Johnson v. State, 82 Ala., 29.

Nor where a juror becomes sick and unable to proceed, or in any case of pressing necessity.—Hawes v. State, 88 Ala., 37; Powell v. State, 19 Ala., 577.

A person has been in jeopardy: When tried for an offense which includes the one he is being prosecuted for.—Sanders v. State, 55 Ala., 42.

When there has been an unauthorized discharge of the jury.—Ned v. State, 7 Port., 187; Law v. State, 4 Ala., 173; Powell v. State, 19 Ala., 577; McCauley v. State, 26 Ala., 135; Ex parte Vincent, 43 Ala., 402; (in conflict, State, ex rel. Battle, 7 Ala., 259; Barrett v. State, 35 Ala., 406, as to when discharge is authorized); Grogan v. State, 44 Ala., 9; Bell v. State, 48 Ala., 684; Cook v. State, 60 Ala., 39; Foster v. State, 88 Ala., 182; Jackson v. State, 102 Ala., 76; Hayes v. State, 107 Ala., 1.

For the protection of the accused, and may be waived.—Ned v. State, 7 Port., 187; McCauley v. State, 26 Ala., 135; Barrett v. State, 35 Ala., 406; Hughes v. State, Ib., 135; Turner v. State, 40 Ala., 21; Jeffries v. State, Ib., 381; Kendall v. State, 65 Ala., 492; Morrisette v. State, 77 Ala., 71.

Being convicted or acquitted of aiding one prisoner to escape, accused cannot be again indicted for aiding another for the same act.—Hurst v. State, 86 Ala., 604.

It is not good matter as a plea of former jeopardy that defendant has been placed upon a preliminary hearing, not even to a second preliminary trial.—State v. Vaughan, 121 Ala., 41.

An arrest of judgment on motion of defendant is an express waiver of this privilege.—State v. McFarland, 121 Ala., 45; Kendall v. State, 65 Ala., 492; Morrisette v. State, 77 Ala., 71; Gunter v. State, 83 Ala., 96.

The State is entitled to reply to a plea of former jeopardy.—State v. Nelson, 7 Ala., 610; Henry v. State, 33 Ala., 389; Wesson v. State, 109 Ala., 61.

Records of former trials cannot be entered into anew to retry cause.—Water's case, 117 Ala., 108.

A conviction or acquittal under municipal ordinances is not a bar to the same prosecution for the same offense under the state laws, unless municipal court has been given concurrent jurisdiction with state court.—Englehart v. State, 88 Ala., 110; Powell's case, 89 Ala., 172.

If indictment is quashed, jeopardy never begins.—Faulk v. State, 52 Ala., 415.

If jury is discharged before indictment read, accused is not in jeopardy.—Scott v. State, 110 Ala., 48.

If indictment or warrant is void, accused cannot be in jeopardy.—Johnson v. State, 82 Ala., 29; Finley v. State, 61 Ala., 201.

If the judge receives the verdict outside of court and discharges jury, accused was in jeopardy and is acquitted.—Jackson v. State, 102 Ala., 76.

Whether the murder of two infants by cruel treatment charges one or two offenses is not decided.—Griffith v. State, 90 Ala., 583.

Where the accused fired three shots in quick succession, each shot does not constitute a distinct assault.—Ellis v. State, 105 Ala., 72.

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same offense, be twice put in jeopardy of life or limb; but courts may, for reasons fixed by law, discharge juries from the consideration of any case, and no person shall gain an advantage by reason of such discharge of the jury.

SEC. 10. That no person shall be barred from prosecuting or defending before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

SEC. 11. That the right of trial by jury

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same offense, be twice put in jeopardy of life or limb.

SEC. 11. That no person shall be debarred from prosecuting or defending, before any tribunal in this State, by himself or counsel, any civil cause to which he is a party.

SEC. 12. That the right of trial by

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If two deaths are the result of one act, there is but one offense, but if the result of two acts, there are two offenses.—Gunter v. State, 111 Ala., 23.

A series of charges cannot be based upon the same act.—Gunter v. State, 111 Ala., 23; Clayborne's case, 103 Ala., 52.

Where accused was charged of several distinct petit larcenies, the Justice of the Peace trying the cause cannot consolidate so as to make one of grand larceny and bind over accused.—Brown v. State, 105 Ala., 117.

As to when a discharge of jury is equivalent to an acquittal, and completes a bar to the further prosecution, see Reynolds v. State, 92 Ala., 44; McGehee v. State, 58 Ala., 360; Monroe v. State, 111 Ala., 15; Moore v. State, 71 Ala., 307; Hayes v. State, 107 Ala., 1; Walker v. State, 117 Ala., 42.

A conviction of manslaughter is an acquittal of murder based upon the same evidence.—Burton v. State, 115 Ala., 1.

A preliminary pleading is no bar to final prosecution.—Skelton's case, 104 Ala., 98; Ex parte Robinson, 108 Ala., 161.

A conviction of larceny under an indictment charging burglary only, is no defense to subsequent indictment charging larceny.—Bowen v. State, 106 Ala., 178.

Where there are two charges against accused, and the trial is entered upon, the defendant cannot select as to which case he is on trial.—Scott v. State, 110 Ala., 48; 113 Ala., 64.

An acquittal of higher grade of crime is worked by a conviction of the lower.—Burton's case, 115 Ala., 1; De Arman's case, 77 Ala., 10; Jordan v. State, 81 Ala., 20.

Former conviction or acquittal must be specially pleaded and should be tried before plea of not guilty.—De Arman's case, 77 Ala., 10; Faulk v. State, 52 Ala., 415.

Plea of former jeopardy must state that defendant was on trial under valid proceedings by indictment or complaint, and should set out such indictment or complaint.—Cross v. State, 117 Ala., 73; Lyman v. State, 47 Ala., 686.

When a jury is sworn and the trial entered upon, jeopardy has begun, and the discharge of the jury without proper ground is equivalent to an acquittal.—Hayes v. State, 107 Ala., 1.

A conviction in a recorder's court for an affray was held to be a bar to a prosecution for an assault with intent to murder, constituted by the same act.—Jackson v. State, 136 Ala., 96; Moore v. State, 71 Ala., 307; Ex parte. Lange, 18 Wall, 163.

Applies to "Mayor's Court."—Withers v. State, 36 Ala., 252.

Need not employ an attorney, but party may appear in person.—May v. Williams, 17 Ala., 23.

No court can exclude an attorney until after he is suspended.—Withers v. State, 36 Ala., 252.

Taxing an attorney's fee as costs against railroad is void.—S. & N. R. Co. v. Morris, 65 Ala., 193.

And so, the requirement that anyone prosecuting or defending against purchaser at tax sale shall deposit money before being allowed to do so.—Stoudenmire v. Brown, 48 Ala., 699; Whitworth v. Anderson, 54 Ala., 33; Lassiter v. Lee, 68 Ala., 287.

But the imposition of the "library tax" is valid.—Swann v. Kidd, 79 Ala., 431.

[SEC. 10.]—

The accused is guaranteed the right to be heard on all questions of law and fact which may arise at any time during his trial.—Peagler v. State, 110 Ala., 14; Ex parte Bryan, 44 Ala., 402.

Appellate courts will not review discretion of lower courts unless the discretion has been abused.—Yeldell v. State, 100 Ala., 26.

[SEC. 11.]—

Jury must consist of twelve men.—Collins v. State, 88 Ala., 212; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala., 571.

Does not extend the right to cases unknown to the common law, or to the statutory law at the time of the adoption of the Constitution.—Boring v. Williams, 17 Ala., 510; Tims v. State, 26 Ala., 165; Thomas v. Bibb, 44 Ala., 721.

Does not apply to impeachments.—State v. Buckley, 54 Ala., 599.

Nor to proceeding to compel the delivery of property to successor in office.—Chambers v. Stringer, 62 Ala., 596.

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shall remain inviolate.

SEC. 12. That in all prosecutions for libel or for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts under the direction of the court.

SEC. 13. That all courts shall be open; and that every person, for any injury done him, in his lands, goods, person or

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SEC. 13. That in prosecutions for the publication of papers investigating the official conduct of officers or men in public capacity, or when the matter published is proper for public information, the truth thereof may be given in evidence; and that in all indictments for libel, the jury shall have the right to determine the law and the facts, under the direction of the court.

SEC. 14. That all courts shall be open, and that every person, for any injury done him in his lands, goods, person, or

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Nor to bill of discovery by creditor.—M. & F. Ry. Co. v. McKenzie, 85 Ala., 546 (s. c., 96 Ala., 465); S. Ry. & C. Co. v. McKenzie, 96 Ala., 465; Norman v. Goetter, 96 Ala., 468; N. Y. Condensed Milk Co. v. Cook, 100 Ala., 580; Cook v. Schmidt, 100 Ala., 582.

Nor to proceedings, under the statute, to try the right to a public office.—Taliaferro v. Lee, 97 Ala., 92 (declaring State v. Burnett, 2 Ala., 140, dictum). But see Wammack v. Holloway, 2 Ala., 31.

But Legislature may, as matter of grace, give a jury trial.—Taliaferro v. Lee, 97 Ala., 92.

Law authorizing a toll-gate to be thrown open if the road is out of repair is a denial of trial by jury.—Powell v. Sammons, 31 Ala., 552.

Includes the right to have the deliberations of the jury continued until a legal reason for discharge occurs.—McCauley v. State, 26 Ala., 135.

Waiver of jury.—Saunders v. State, 55 Ala., 42; Connelly v. State, 60 Ala., 89.

A person proceeded against in County Court upon information and complaint has no right of appeal without giving bond.—Ex parte Reese, 112 Ala., 63.

The failure to provide jury trials for contest election does not render the statutes void. —Taliaferro v. Lee, 97 Ala., 92.

Courts cannot deprive a party of jury trial by ordering a non-suit.—Hunt v. Stewart, 7 Ala., 525; Saunders v. Coffin, 16 Ala., 421.

In felony trials the defendant must be present in person.—Bryan's case, 44 Ala., 402.

A party has a constitutional right to defend himself.—May v. Williams, 17 Ala., 23.

And he is entitled to be heard in the regular course of procedure. State v. McCall, 4 Ala., 643.

The constitutional right may be preserved by securing jury trial on appeal.—Collins v. State, 88 Ala., 212, but it was said in Reeves v. State, 96 Ala., 33, that if such statutes had the effect to deny jury trial, they would be void.

A demand for jury trial may be by endorsement on appeal bond.—Freeman v. Bridges, 123 Ala., 287.

The Legislature may authorize trials for misdemeanors without a jury or dispense with indictments; the provisions of the Federal Constitution do not apply to State courts or trials under State Constitutions and State statutes but only to the Federal courts.—Frost v. State, 124 Ala., 71; Pearson v. Yeldell, 95 Ala., 294.

Statute requiring an appearance bond as a condition precedent to a jury trial does not deny the accused his constitutional right.—Howard v. State, 128 Ala., 43.

Jury trial is not guaranteed as to proceedings on scire facias against bail.—Posey v. State, 79 Ala., 45; Irwin v. Scruggs, 32 Ala., 516.

A statute authorizing the Probate Court to establish a stock law district is not in violation of this provision of the Constitution.—Edmondson v. Ledbetter, 114 Ala., 477.

Where a jury is waived for one trial, it is waived forever.—Brock v. L. & N. R. R. Co., 123 Ala., 172.

Waiver of jury trials are, however, strictly construed and they have sometimes been held to be only for that particular trial.—Cross v. State, 78 Ala., 430; Ex parte Ansley, 107 Ala., 613; Knight v. Farrell, 113 Ala., 258.

Provisions in a city court's charter may provide for the waiver of juries as to misdemeanors.—Reeves v. State, 96 Ala., 33; Ex parte Ansley, 107 Ala., 613.

[SEC. 13.]—

Justice cannot be sold or denied by the exaction of a pecuniary consideration for its enjoyment from one, when it is freely given to another.—S. & N. R. Co. v. Morris, 65 Ala., 193; Smith v. L. &. N. R. Co., 75 Ala., 449; L. & N. R. Co. v. Baldwin, 85 Ala., 619; Brown v. A. G. S. R. Co., 87 Ala., 370; Randolph v. B. & P. Sup. Co., 106 Ala., 501.

"Stay law" does not violate.—Ex parte Pollard, 40 Ala., 77.

Nor "library tax."—Swann v. Kidd, 79 Ala., 431.

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reputation, shall have a remedy by due process of law; and right and justice shall be administered without sale, denial or delay.

SEC. 14. That the State of Alabama shall never be made a defendant in any court of law or equity.

SEC. 15. That excessive fines shall not be imposed, nor cruel or unusual punishment inflicted.

SEC. 16. That all persons shall, before conviction, be bailable by sufficient sure-

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Nor law providing that contracts shall be awarded only when a board of revenue and their clerk are in private.—State v. Rogers, 107 Ala., 444.

But law requiring deposit of money by party prosecuting or defending suit against purchaser of land at tax sale violates this section.—Stoudenmire v. Brown, 48 Ala., 699; Whitworth v. Anderson, 54 Ala., 33; Lassiter v. Lee, 68 Ala., 287.

Taxing an attorney's fee against railroads in certain cases is not "due process."—S. & N. R. Co. v. Morris, 65 Ala., 193.

And giving Justice of the Peace extraordinary jurisdiction in actions for damages against railroad is discrimination and unconstitutional. —Brown v. A. G. S. R. Co, 87 Ala., 370, (declared dictum in 109 Ala., 495).

And a law giving the lienor filing a mechanic's lien a lien also for an attorney's fee. —Randolph v. B. & P. Sup. Co., 106 Ala., 501.

The statute requiring security for costs by a nonresident suitor is not offensive to this provision.—Ex parte L. & N. R. Co., 124 Ala., 547.

Discriminations against corporations not authorized.—Brown's case, 87 Ala., 370.

Requiring one class of litigants to pay attorney's fees is unconstitutional.—Randolph v. Builders' Co., 106 Ala., 511.

Requiring litigant to deposit double the amount of purchase money as a condition precedent to maintaining an action is unreasonable, and void.—Lassiter v. Lee, 68 Ala., 287; Whitworth v. Anderson, 54 Ala., 33; Stoudenmire v. Brown, 48 Ala., 699.

Statutes cannot deny the accused a speedy public trial without sale or denial.—Tate's case, 76 Ala., 485; Reeves' case, 96 Ala., 33.

[SEC. 14.]—

State cannot be sued by cross-bill asking affirmative relief.—Holmes v. State, 100 Ala., 90.

Suit against the warden of the penitentiary on a contract made by him in his official capacity, is a suit against the State.—Comer v. Bankhead, 70 Ala., 493.

The state is not liable to suit except by its own consent.—Ex parte McDonald, 76 Ala., 603.

The state is not liable for the torts of its agents or officers.—State v. Hill, 54 Ala., 67.

As to actions against State to enjoin the sale of mortgaged bonds, see Mobile Co. v. State, 29 Ala., 573.

Can a State be sued in Chancery?—Ex parte Green, 59 Ala., 22.

An action will not lie against a public or charitable institution or corporation, such as the Alabama Bryce Insane Hospital, under the Homicide Act or under the Employers' Liability Act for wrongful death or injury, the result of the negligence of the officers or agents of such institution. The State or institution is not liable for the acts of such officers or agents.—White v. Alabama Bryce Insane Hospital, Mss.

[SEC. 15.]—

Capital punishment in itself is not cruel or unusual, but the mode of its infliction may be cruel and unusual. The infliction of this punishment rests entirely in the discretion of the Legislature in the absence of constitutional prohibition.—Tiedeman's Lim. Pol. Pow., 21.

Whipping as a mode of punishment was once in use. The rule at common law was that the punishment should be disgraceful; it was considered peculiarly adapted to the crimes which betrayed a taint of moral depravity, such as wife-beating, larceny, etc., but public opinion is now strongly against it; it is considered too degrading, and the right to adopt it now as a punishment is doubted; the infliction of stripes was considered more degrading than death.—Tiedeman's Lim. Pol. Pow., 23, 24; Herber v. State, 7 Tex., 69; Cooley Const. Lim., 330.

A statute providing a death penalty as exclusive punishment for the crime of murder committed by a convict under life sentence is not class legislation.—Williams v. State, 130 Ala., 31.

As to what is cruel and unusual punishment, see 35 L. R. A., 561.

Capital punishment is authorized but not compelled.—Brown v. State, 109 Ala., 70.

The usual modes of punishment in this State are by death, imprisonment in the penitentiary, imprisonment in jail, hard labor for the county or by fine. Ib.; Brown v. State, 46 Ala., 186; 47 Ala., 34; 42 Ala., 546.

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ties, except for capital offenses, when the proof is evident or the presumption great; and that excessive bail shall not in any case be required.

SEC. 17. That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this State.

SEC. 18. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 19. That no person shall be attainted of treason by the Legislature;

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SEC. 18. That the privilege of the writ of habeas corpus shall not be suspended by the authorities of this State.

SEC. 19. That treason against the State shall consist only in levying war against it, or adhering to its enemies, giving them aid and comfort; and that no person shall be convicted of treason, except on the testimony of two witnesses to the same overt act, or his own confession in open court.

SEC. 20. That no person shall be attainted of treason by the General Assem-

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[SEC. 16.]—

Designed to place the right to bail beyond legislative or judicial power; does not restrain Legislature from authorizing bail in the excepted cases.—Ex parte Croom, 19 Ala., 561.

To justify refusal of bail the offense must be capital, the proof evident or presumption great; this cannot be if a well-founded doubt exists.—Ex parte Simonton, 9 Port., 390; Ex parte McCrary, 22 Ala., 65; Ex parte Mahone, 30 Ala., 49; Ex parte Bryant, 34 Ala., 270.

It is a safe rule to deny bail if the court would sustain a capital conviction on the evidence.—Ex parte Nettles, 58 Ala., 268.

Law providing that if the defendant is not tried at the second term he may have bail does not violate.—Ex parte Croom, 19 Ala., 561.

If the assaulted person is likely to die within a year and a day, accused is not entitled to bail, unless he would be so entitled if assaulted person died.—Ex parte Andrews, 19 Ala., 582.

The accused is entitled to bail in all cases except when it is punished capitally, or when the proof is evident or the presumption great.—Ex parte Bonner, 100 Ala., 114; Ex parte Richardson, 95 Ala., 110.

Bail should be refused unless court would set aside verdict of conviction supported on that evidence.—Ex parte Sloan, 95 Ala., 22; Ex parte Nettles, 58 Ala., 268.

If the wound may produce death within a year and a day, the accused may be guilty of murder.—Ex parte Andrews, 19 Ala., 582.

Bail should not be refused if crime is not punishable capitally.—Ex parte McAnally, 53 Ala., 496.

In determining the amount of bail court should consider pecuniary condition of accused.—Ex parte Banks, 28 Ala., 89.

If a well-founded doubt exists, or if the evidence is circumstantial and does not exclude to a moral certainty every hypothesis of guilt, the accused should be allowed bail.—Ex parte Acree, 63 Ala., 234; Ex parte Howard, 30 Ala., 33.

[SEC. 17.]—

Habeas corpus is a writ of right; it is a legal process employed for the summary vindication of the right of personal liberty when illegally restrained.—Kirby v. State, 62 Ala., 51; McKivitt v. State, 55 Ala., 236; Ex parte Campbell, 20 Ala., 89.

It is the remedy for illegal imprisonment to be pursued by judicial officers.—Kirby v. State, 62 Ala., 51.

The writ does not entitle accused to a discharge on account of the failure of the law when reasonably adapted to secure speedy trial.—Ex parte Tate, 76 Ala., 482.

But a convict unreasonably detained contrary to the judgment and sentence should be discharged.—Ex parte Rand, 99 Ala., 302; Ex parte Goucher, 103 Ala., 305; Ex parte King, 82 Ala., 59; Ex parte Stewart, 98 Ala., 68.

[SEC. 18.]—

That accused was acting in obedience to a de facto government or under such influence as to imperil his life in the case of dissent, he is not guilty of treason.—Arp. v. State, 97 Ala., 11.

Accused charged with treason may be released on habeas corpus.—State v. Phil, 1 Stew., 31; State v. McLendon, 1 Stew., 195. (Note.—these cases under treason are dicta.)

[SEC. 19.]—

A bill of attainder is a legislative act which inflicts punishment without a judicial trial. It may affect the life of the individual or confiscate his property or both, and bills of pains and penalties are prohibited by the Federal Constitution as well as bills of attainder.—Cummings v. Mo., 4 Wall., 323; Drehman v. Stifle, 8 Wall., 601; Fletcher v. Peck., 6 Cranch, 138; Cooper v. Telfair, 4 Cal., 18.

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and no conviction shall work corruption of blood or forfeiture of estate.

SEC. 20. That no person shall be imprisoned for debt.

SEC. 21. That no power of suspending laws shall be exercised except by the Legislature.

SEC. 22. That no *ex post facto* law,

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Bill of attainder is said to be a legislative conviction for crime, operating against a party individually. On some classes of individuals under the ancient law it included only those exactments which pronounce judgment of death, but it now includes all punishments and penalties.—Cooley Const. Lim., 351-413; Ex parte Garland, 4 Wall., 333.

Bills of attainder inflict punishment without trial, and embrace bills of pains and penalties. Fletcher v. Peck, 6 Cranch, 138; Cummings case, 4 Wall., 323; Drehman' case, 8 Wall, 601.

[SEC. 20.]—

Applies to liabilities ex contractu; defendant may not be imprisoned for alleged contempt in failing to pay a decree for money.—Ex parte John Hardy, 68 Ala., 303; Brickell, C. J., dissented; State v. Allen, 71 Ala., 543; Smith v. State, 2 Ala., 40; Wynn v. State, 82 Ala., 55.

Fines, forfeitures, and costs arise ex delicto, and are not debts.—Nelson v. State, 46 Ala., 186; Ex parte Hardy, 68 Ala., 303; State v. Bauerman, 72 Ala., 252; Lee v. State, 75 Ala., 29; State v. Leach, 75 Ala., 36; Smith v. State, 82 Ala., 40; Wynn v. State, 82 Ala., 55.

Advances made to a convict by his surety in the confession of judgment is a debt arising ex contractu.—Smith v. State, 82 Ala., 40; Wynn v. State, 82 Ala., 55.

Law punishing crime of enticing away servant of another does not imprison for debt.—Tarpley v. State, 79 Ala., 271.

Nor "innkeepers' law."—Ex parte King, 102 Ala., 182.

Law authorizing imprisonment, not as an alternative punishment or in lieu of fine and costs, but as a means of coercing the payment of fine and costs, violates Constitution.—Ex parte Russellville, 95 Ala., 19.

And so, a law punishing with imprisonment, a banker who receives a deposit knowing he is insolvent.—Carr v. State, 106 Ala., 35.

It makes no difference that the debt was contracted fraudulently.—Ex parte Hardy, 68 Ala., 303; Carr v. State, 106 Ala., 35.

The constitutional inhibition from imprisonment for debt does not apply to the sentence of a criminal to hard labor to pay costs in criminal cases.—Brown v. State, 115 Ala., 74; Caldwell v. State, 55 Ala., 133; Morgan v. State, 47 Ala., 36.

Statutes making it a criminal offense to obtain board by fraud or misrepresentation is not unconstitutional.—Ex parte King, 102 Ala., 182; Chauncey v. State, 130 Ala., 71.

Statutes making it a crime to violate a contract with surety in criminal cases is not unconstitutional.—Bailey v. State, 87 Ala., 44; Tarpley v. State, 79 Ala., 271.

A willful violation of a public duty may be made a crime, and may be punished by imprisonment, such as the failure to furnish water to a city or other like public duty.—Crosby's case, 108 Ala., 498; Blann v. State, 39 Ala., 353; Stein v. State, 37 Ala., 123.

Authorizing county to work convicts to pay fine and costs is not imprisonment for debt.—Bailey v. State, 87 Ala., 44.

Indefinite imprisonment until fine is paid is imprisonment for debt.—Ex parte Russellville, 95 Ala., 19.

A statute providing for the imprisonment of a banker until deposit is paid was held to be imprisonment for debt.—Carr v. State, 106 Ala., 35.

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The Legislature may provide that a statute shall take effect upon the happening of a future event, and may authorize an officer to announce when the event has happened.—Hand v. Stapleton, 135 Ala., 156; St. Louis v. Ill., 185 U. S., 203; Stein v. Mobile, 24 Ala, 591; Jackson v. State, 131 Ala., 21; State v. Crook, 126 Ala., 600; Ex parte Hill, 40 Ala., 122; Clark v. Jack, 60 Ala., 271.

[SEC. 22.]—

Retrospective laws are not necessarily ex post facto. Ex post facto laws apply to penal laws only. A law which makes a past act a crime, or increases the punishments for past crimes, or alters the rules of evidence as to existing crimes to the detriment of the accused is ex post facto. Calder v. Bull, 3 Dall., 390; Watson v. Mercer, 8 Pet., 110; Ogden v. Saunders, 12 Wheaton, 266.

A statute reducing the number of peremptory challenges is not an ex post facto law.—South's case, 86 Ala., 617.

A law which alters the situation of the accused to his hurt is ex post facto.—Kring v. Mo., 107 U. S., 221.

A law requiring special pleas as to insanity is not ex post facto.—Perry v. State, 87 Ala., 35.

A statute providing a punishment for illegal voting is not ex post facto.—Washington v. State, 75 Ala., 582.

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nor any law, impairing the obligations

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any law impairing the obligation of con-

Laws affecting the admissibility or relevancy of evidence pertain to the remedy and are not ex post facto.—Goodlett v. Kelley, 74 Ala., 214.

A law increasing the costs in a criminal case may be ex post facto.—Caldwell v. State, 55 Ala., 133.

Where a punishment is increased or degree of crime increased, it cannot apply to existing crimes.—Miles v. State, 40 Ala., 39; Moore v. State, 40 Ala., 49.

A law imposing a punishment for an act not punishable at the time of commission is ex post facto.—Smith v. Cockrell, 66 Ala., 64.

The Constitution does not inhibit retrospective legislation, yet it does not authorize expository statutes; to declare what the law is, is a judicial power, to declare what the law shall be is legislative.—Lindsay v. U. S. Co., 120 Ala., 156.

The Legislature has no authority to direct the judiciary how to interpret the law.—Lindsay v. U. S. Co., 120 Ala., 156; Carlton v. Goodwin, 41 Ala., 153; Ins. Co. v. Boykin, 38 Ala., 110.

A statute providing for the imposition of hard labor, for the payment of costs, must be in operation at the time the offense was committed, otherwise it is ex post facto.—Brown v. State, 115 Ala., 74; Caldwell v. State, 55 Ala., 133.

An act regulating usurious transactions which provides that past transactions, usurious in their inception are not now usurious, is invalid.—Lindsay v. U. S. Co., 120 Ala., 156.

Prospective laws are the rule; retrospective laws are the exceptions.—Lindsay v. U. S. Co., 120 Ala., 171.

Lapsed liens cannot be resuscitated and kept alive by subsequent legislation.—Martin v. Hewitt, 44 Ala., 418.

Statutes as to bills of exceptions may be retroactive.—Wharton v. Cunningham, 46 Ala., 590.

Deed void because of defective acknowledgements cannot be cured by subsequent legislation.—Ala. Co. v. Boykin, 38 Ala., 510.

See the following cases:

No ex post facto law shall be passed.—Aldridge v. T. C. & D. R. Co., 2 S. & P., 199; Elliott v. Mayfield, 4 Ala., 417; Holman v. Bank of Norfolk, 12 Ala., 369; Eliza v. State, 39 Ala., 693; Aaron v. State, 39 Ala., 684; Witherby v. State, 39 Ala., 702; Ferdinand v. State, 39 Ala., 706; Turner v. State, 40 Ala., 21; Hart v. State, Ib., 32; Miller v. State, Ib., 54; Stephen v. State, Ib., 67; Walthall v. Walthall, 42 Ala., 450; Payne v. State, 60 Ala., 80; Brown v. Williams, 87 Ala., 353; Cary v. Simmons, 87 Ala., 524.

OBLIGATION OF CONTRACTS (See notes, sec. 95, p. 59).

Municipal corporations are subject to the control of the Legislature which creates them. Their charters are not within the protection of the obligation of the Constitution, but the Legislature cannot take the private property of such corporations. The Legislature may alter, annul or repeal such charters unless the Constitution prohibits it; they stand in no contractual relations with the State. The grant of the power of taxation to a municipal corporation is not a contract, or granting the right to maintain a ferry is not within the protection, but as to the owners of property such as stocks and bonds their obligations as to such matter is secured as well as those of individuals with respect to their private rights and interest they are portected by the contractual obligation of the Constitution. A right to reimbursement from State for damages caused by the State is not a contract; it may be withdrawn or limited by subsequent legislation, but a contract made by municipalities cannot be affected by subsequent statutes or constitutional amendments. When such municipal corporation takes stock in railroad companies, and is authorized so to do, it is to that extent a private corporation, and bound as a private individual to its obligations; but where a municipality is prohibited from entering into such contracts or subscription for the stock in corporations, a contract so to do would be ultra vires and void, hence the contract was no contract, and would not be within the protection of the Constitution, but statutes prohibiting municipalities from aiding railroads or other corporations cannot impair the obligation of contracts already made, which were valid when made.—County of Moultrie v. Fairfield, 105 U. S., 375; County of Cly v. Soc. for Savings, 104 U. S., 590; Louisiana v. Taylor, 105 U. S., 458; Scotland Co. v. Hill, 132 U. S., 112.

The validity of a contract cannot be impaired by the Legislature. The Federal and State Constitutions each forbids this; the burdens of the contract cannot be diminished or increased by the Legislature. Of course, illegal contracts are not within the provision, neither are executed contracts, neither can the remedies for enforcing contracts or for the violation of their rights be taken away, but the State Constitution can take away the right of action if it does not impair the obligation of the contract; but if a substantial remedy is provided it is not in violation of the Constitution, the character is changed. Even substantial changes are permissible as long as a substantial remedy remains.—Tiedeman's Lim. Pol. Pow., 518.

The rules of evidence may be changed by the Legislature. No man can be said to have the right to have his controversies determined by existing rules of evidence, but the statute cannot preclude the right to a judicial examination into the facts by making evidence conclusive.

A statute which exempts all the property of a debtor from execution as to a demand accrued before its passage would be un-

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of contracts, or making any irrevocable

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tracts, or making any irrevocable grants

constitutional. Exemption laws cannot therefore be retroactive.—Wilson v. Brown, 58 Ala., 62; (29 Am. Rep., 727); Johnson v. Fletcher, 54 Miss., 628; (28 Am. Rep., 388.)

A statute as to fine and forfeiture fund held not to impair the obligation of contracts.—Harold v. Herrington, 95 Ala., 395.

A statute requiring railroad engineers and firemen to stand examination does not impair the obligation of contracts.—Nashville Co. v. State, 83 Ala., 71.

As to municipal ordinance relating to streets and sidewalks, see Winter v. Mont., 83 Ala., 589.

Mere exemptions from taxation are not contracts within the protection of the Constitution.—Calhoun Co. v. Woodstock Co., 82 Ala., 151.

A franchise granted by municipal corporations, if legal, is within the protection of the Constitution.—Birmingham Co. v. Birmingham Co., 79 Ala., 465.

Exemptions from jury duty are not contracts within the protection of the Constitution.—Dunlap v. State, 76 Ala., 460.

Exemptions to widows, see Bell v. Hall, 76 Ala., 547.

As to act creating board of improvement for river and harbor, and as to contracts made under such act, see Slaughter v. Mobile, 73 Ala., 134.

Contracts made by the Legislature cannot be impaired any more than those made by individuals.—Slaughter v. Mobile, 73 Ala., 134.

As to statutes authorizing creditors to intervene in pending suits, see Peevey v. Cabaness, 70 Ala., 253.

The obligation of a contract which cannot be impaired is its binding force on the party making it. The Constitution forbids the least as well as the greatest impairment of its obligation.—Edwards v. Williams, 70 Ala., 145.

Whatever belongs merely to the remedy may be altered, provided it does not impair the obligation.—Edwards v. Williams, 70 Ala., 145; Ex parte Pollard, 40 Ala., 77.

A license to sell liquor is not a contract within the protection of the Constitution.—Powell v. State, 69 Ala., 10.

Such license can be revoked at the will of the Legislature.—Boyd v. Ala., 94 U. S., 645.

Exemption laws cannot be given retroactive effect without impairing the obligation of contracts.—Fearne v. Ward, 65 Ala., 33; Nelson v. McCrary, 60 Ala., 301.

The fact that the State is a party to a contract does not authorize the Legislature to impair its obligation.—State v. Cobb, 64 Ala., 127.

Exemption laws cannot impair the obligation of contracts.—Wilson v. Brown, 58 Ala., 62; Nelson v. McCrary, 60 Ala., 301.

A statute authorizing married women to take appeals, held not to impair the obligation of contracts.—Todd v. Neal, 49 Ala., 266.

As to whether statutes creating Mobile Charitable Association grants a franchise upon a consideration, such that it cannot be impaired, see Horst v. Moses, 48 Ala., 129.

An act to establish revenue laws of the State of Alabama, held not to impair the obligation of contracts.—Mobile Co. v. Peebles, 47 Ala., 317.

As to whether a statute authorizing the carrying on of a lottery creates a contract which cannot be impaired, see Boyd v. State, 46 Ala., 329; Brent v. State, 43 Ala., 227.

As to whether a statute relating to bills of exceptions impairs the obligation of contracts, see Wharton v. Cunningham, 46 Ala., 590.

Statute creating mere imposts or tributes are not contracts within the protection of the Consitution.—Med. Col. v. Muldon, 46 Ala., 603.

As to whether a charter granted an association carrying on a lottery is within the protection of the Constitution, see Broadbent v. Tus. Co., 45 Ala., 170.

Salaries of officers are not within the protection of the Constitution.—Perkins v. Corbin, 45 Ala., 103.

As to whether ordinance of conventions are within the protection of the Constitution, see Fitzpatrick v. Hearne, 44 Ala., 171.

A statute to regulate judicial proceedings as to judgments was held void, because it impaired the obligation of contracts.—Martin v. Hewitt, 44 Ala., 419.

An Act entitled, "An Act for the protection of bona fide purchasers," which creates a mere lien has no element of contract.—Martin v. Hewitt, 44 Ala., 419.

A charter of a corporation created for public ends and not private benefit is not a contract within the protection of the Constitution.—Mobile Co. v. Putman, 44 Ala., 506.

A statute which requires a return and appearance in certain cases at certain times does not violate the Constitution.—Curry v. Reynolds, 44 Ala., 349.

As to statutes or ordinances declaring certain judgments void and granting new trials, see Ex parte Sims, 44 Ala., 248.

An ordinance of a convention rendering certain contracts void impaired the obligation, and was, therefore, void.—Roach v. Gunter, 44 Ala., 209.

As to statutes or ordinances granting new trials and impairing obligations of contracts, see Ex parte Norton & Shields, 44 Ala., 177.

An ordinance of a convention making bills, bonds and notes of the Confederate States void, held not to be unconstitutional.—Hale v. Huston, 44 Ala., 134.

As to ordinances for sales made in Confederate currency, see Herbert v. Easton, 43 Ala., 547.

A statute to regulate judicial proceedings, held void, because it impaired the obligation of contracts and delayed justice.—Ashurst v. Phillips, 43 Ala., 158.

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of special privileges or immunities, shall

A statute providing for new trials, setting aside judgments, held void, because it impaired the obligation of contracts.—Weaver v. Lapsley, 43 Ala., 224.

The Legislature cannot alter an old remedy or create a new one, so as to impair the contract or the right or liabilities of the parties thereto; this is the only limitation upon the power of the Legislature as to contracts.—Lea v. Iron Belt Co., 119 Ala., 271; Edwards v. Williams, 70 Ala., 145; Friend v. Powers, 93 Ala., 113.

Authorizing a toll bridge was held not to impair the contract as to the charter of a ferry. —Dyer v. Tuscaloosa, 2 Port., 296.

The Legislature may abolish a municipality and establish another in its stead, without violating the obligation of contracts.—Smith v. Inge, 80 Ala., 283.

Offices nor the compensation therefor are not contracts within the meaning of the Constitution.—Benford v. Gibson, 15 Ala., 521; Ex parte Wiley, 54 Ala., 226; Perkins v. Corbin, 45 Ala., 103; Ex parte Lambert, 52 Ala., 79. But the case of Wammack v. Holloway, 2 Ala., 31, held that the right to exercise an office was a species of property.

The Legislature may require bond for the performance of official duties.—Ex parte Buckley, 53 Ala., 42.

The charter of a corporation may be a contract within the meaning of the Constitution.—Ala. Co. v. Burkett, 46 Ala., 569; 2 Stew., 30; Minor, 23.

Corporations may amend their charters without violating the obligation of the contract.—State v. Mont. Co., 102 Ala., 594.

A statute authorizing toll gates to be thrown open when out of repair, was held to violate the charter of the toll gate company.—Howell v. Sammons, 31 Ala., 552.

The Legislature may impose a tax upon the capital stock of a bank.—Judson v. Sate, Minor, 150.

Marriage is not a contract within the meaning of the Constitution.—Green v. State, 58 Ala., 190.

A contract valid when made cannot be destroyed by statute.—Mays v. Williams, 27 Ala., 267.

The Legislature may modify dower law after marriage.—Boyd v. Harrison, 36 Ala., 533; Ware v. Owens, 42 Ala., 212.

A statute authorizing the investment of trust funds in depreciated currency is void.—Houston v. DeLoach, 43 Ala., 364; Powell v. Boon, 43 Ala., 459.

A statute divesting title out of the mortgagee on payment of mortgage debt is valid.—Abbett v. Page, 92 Ala., 571.

The Legislature may modify summary remedies.—Ex parte N. E. Co., 37 Ala., 679.

Dissolving a corporation or forfeiting its charter does not impair the contract.—Mobile Co. v. State, 29 Ala., 573.

Personal liability of stockholders cannot be impaired by subsequent statutes.—McDonnell v. Ala. Co., 85 Ala., 401.

A statute so altering a remedy as to impair a right would be void.—Adams v. Creen, 100 Ala., 218.

The law in force as to stipulations of a contract, and the remedy provided for its enforcement is a part of the contract and cannot be impaired.—Com. v. Rather, 48 Ala., 433.

Statutes may modify remedies and liens as to mortgages or mechanics' lien law without impairing the contract.—Osborn v. Johnson Co., 99 Ala., 309.

Insolvent laws do not necessarily impair the obligation of contracts.—Wilson v. Matthews, 32 Ala., 332.

A mechanic's lien, as to buildings, may be given priority over existing liens upon the land.—Wimberly v. Mayberry, 94 Ala., 240.

Redemption laws cannot impair existing contracts.—Bugbee v. Howard, 32 Ala., 713.

The Legislature may delay or postpone trials without impairing contracts.—Ex parte Pollard, 40 Ala., 77.

Where the charter of a corporation exempts it from taxation, it is a contract between the Legislature and the corporators within the protection of the Federal Constitution; the acceptance of the charter may be sufficient consideration, neither the New Constitution nor statute can impair the obligation of such contract. —State v. Alabama Bible Society, 134 Ala., 632; Mayor v. Ins Co., 53 Ala., 570; Hare v. Kennerly, 83 Ala., 608.

A law which establishes rules of evidence does not impair contracts, though it may relate to past transactions.—Herbert v. Easton, 43 Ala., 547; Hart v. Ross, 64 Ala., 96.

A lien given by statute may be taken away by statute.—Ray v. Thompson, 43 Ala., 434; Martin v. Hewitt, 44 Ala., 418.

A statute ordering a stay of execution so as to destroy a right would impair the obligation of contracts.—Hudspeth v. Davis, 41 Ala., 389; Ex parte Woods, 40 Ala., 77; Ashurst v. Phillips, 43 Ala., 158.

Statutes authorizing new trials, held not to impair contracts.—Ex parte Bibb, 44 Ala., 140; Ex parte Norton, 44 Ala., 177.

Statutes authorizing executions for fees and costs do not impair the obligation of contracts. —Anonymous, 2 Stew., 228.

Statutes authorizing married women to appeal without bond do not impair contracts.—Todd v. Neal, 49 Ala., 266.

A retroactive statute, if it destroys the obligation of the contract, is void.—Aldridge v. Tuscumbia, 2 Stew. & Port., 199; Bloodgood v. Cammack, 5 Stew. & Port., 276.

Judgments are contracts within the meaning of the Constitution.—Weaver v. Lapsley, 43 Ala., 224.

or immunities, shall be passed by the | be passed by the General Assembly.

Repealing an act authorizing suit against the State does not violate the obligation of contracts.—Ex parte State, 52 Ala., 231.

The charter of a bridge company cannot be impaired by subsequent ordinances or statutes of cities, if it amounts to a contract.—City of Col. v. Rodgers, 10 Ala., 37.

The fine and forfeiture fund is entirely a creature of statute, and the Legislature has complete control over it. It may give one claim a preference over another.—Shell v. Beeland, 123 Ala., 569; Harold v. Harrington, 95 Ala., 395; Stone v. Ames, 91 Ala., 644; 78 Ala., 328; 76 Ala., 270.

The only limitation upon the legislative power to alter or create a remedy which shall apply to causes of action on contracts previously made, is that the alteration or remedy shall not impair the contract.—Edwards v. Williams, 70 Ala., 145; Lea v. Iron Belt Co., 119 Ala., 271.

A statute imposing punishment for violating public duty growing out of contract does not impair the obligation of contracts.—Crosby v. Mont., 108 Ala., 498.

A municipal ordinance regulating business of hack drivers or transportation companies does not impair the obligation of contracts.—Lindsay v. Anniston, 104 Ala., 257; Munn v. Ill., 94 U. S., 113.

Corporations and their shareholders may waive the protection of the Constitution as to impairing the obligation of contracts.—State v. Montgomery Co., 102 Ala., 594.

A provision contained in the charter of a corporation exempting it from taxation obtained under the Constitution of 1819 is a contract, the obligation of which cannot be impaired by subsequent laws taxing the property. But this rule was changed by the Constitutions of 1868, 1875 and 1901, to the extent that the Legislature might subsequently alter the charter for the public good as to corporations created since 1868.—State v. Alabama Society, 134 Ala., 634; Dartmouth Col. v. Woodward, 4 Wheat., 518; Ala. Co. v. Burkett, 46 Ala., 569; Tuscaloosa Co. v. Green, 48 Ala., 346.

Unless the charter provides otherwise, or the Constitution authorizes or prohibits, charters of corporations are contracts within the protection of the Constitution.—State v. Alabama Society, 134 Ala., 635; Mayor v. Ins Co., 53 Ala., 570; Hare v. Kennerly, 83 Ala., 608.

Subsequent legislation cannot change the remedy so as to impair the obligation of contracts.—Limestone Co., v. Rather, 48 Ala., 433.

The Legislature has no power to authorize a contractor to change the terms of his contract with the owner of premises and impose liabilities upon the owner by an agreement between the contractor and material men, to which the owner is not a party.—Selma Co. v. Stoddard, 116 Ala., 251.

See also the following cases:

Wheat v. State, Minor, 199; State v. Tombeckbee Bank, 2 Stew., 30; Dale v. Governor, 3 Stew., 387; Trustees v. Winston, 5 S. & P., 17; Rathbone v. Bradford, 1 Ala., 312; Givens v. Western Bank, 2 Ala., 397; Bartlett v Lang, 2 Ala., 402; Iverson v. Shorter, 9 Ala., 713; Paschal v. Whitsitt, 11 Ala., 472; Holman v. Bank of Norfolk, 12 Ala., 369; Trustee v. Walden, 15 Ala., 655; Walker v. Chapman, 22 Ala., 116; Beck v. Burnett, Ib., 822; Jemison v. P. & M. Bank, 23 Ala., 168; Coosa River S. Co. v. Barclay, 30 Ala., 120; Curry v. Landers, 35 Ala., 280; T. & C. R. Co. v. Moore, 36 Ala., 371; Ala. Life Ins. Co. v. Boykin, 38 Ala., 510; Warfield v. Ravesies, Ib., 518; A. & F. R. Co. v. Kenney, 39 Ala., 307: Blann v. State, 39 Ala., 353; Page v. Matthews, 40 Ala., 547; Scheible v. Bacho, 41 Ala., 423; Tarleton v. Southern Bank, 41 Ala., 722; Kirtland v. Molton, 41 Ala., 548; M. & M. R. Co. v. Steiner, 61 Ala., 559; Smith v. Cockrell, 66 Ala., 64; Goodlett v. Kelly, 74 Ala., 213; M. & S. H. R. Co. v. Kennedy, 74 Ala., 566; Amy v. Selma, 77 Ala., 103; Winter v. City Council, 83 Ala., 589.

## PRIVILEGES AND IMMUNITIES.

The Constitution of the United States provides that the citizens of each State shall be entitled to all the privileges and immunities of citizens of the several States, and that the States shall not abridge the privileges and immunities of the citizens of the United States. This creates the right of the citizen to remove to and carry on business in another State; the right to acquire and hold property, protect and defend the same at law; the right to judicial remedies in collection of debts; enforcement of his rights; the right to be exempt from taxes and burdens which citizens of that State are exempt from, and that discrimination shall not be made against him.—Cooley Const. Lim., 492; Ward v. Maryland, 12 Wall., 163; Crandall v. Nev., 6 Wall., 35; Kirkland v. Hotchkiss, 100 U. S., 491.

When laws operate on all alike who are similarly situated, equal protection is not denied. The 14th amendment was intended to prevent singling out any person or class of persons as a special subject for discrimination for or hostilities against; it is to preserve equality of rights and to prevent radical changes in the theory of relations between the State and Federal Governments. It secures equal protection to all persons in the same class and under like circumstances; it prevents one class from suffering loss to enrich another. It requires the same means or methods of the law to be applied impartially to all the constituents of a given class, so that it shall operate equally upon all persons similarly situated.—Magoun v. Ill. Co., 170 U. S., 293.

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As to what special privileges and immunities can be conferred on corporations by franchise, see Horst v. Moses, 48 Ala., 129.

A statute for the protection of landlords and making it a crime to obtain board or lodging by fraud, does not grant special privileges and immunities.—Ex parte King, 102 Ala., 182.

Statutes making it a misdemeanor for bank to discount a bill for more than 8 per cent is not void as class legislation.—Youngblood v. Birmingham Co., 95 Ala., 521.

Held that municipal corporation in particular case could not grant an exclusive franchise in perpetuity of running trains upon certain streets, and that such franchises were a violation of the Constitution.—Birmingham Co. v. Birmingham Co., 79 Ala., 465.

The policy of our laws is to condemn irrevocable and exclusive privileges and franchises as much so as the common law did, particularly monopolies, which were then and are now deemed odious and in contravention of common right, intended to destroy trade by extinguishing competition.—Birmingham Co. v. Birmingham Co., 79 Ala., 465.

But it is certain this is not true as to every business, trade or profession, but the Constitution of Alabama prohibits the Legislature from making any irrevocable grant, exclusive privileges and immunities, and the Supreme Court of Alabama decided in the case of B'ham St. Ry Co., v. B'ham St. Ry. Co., 79 Ala., 473, that "monopolies were void at common law, and are not commonly conferred by the legislative grant, and need no special prohibition under the organic law of a free republic. They may now be regarded as relics of governmental folly, rendered odious by royal prerogative in the most extravagant periods of European monarchies." In the same case Judge Somerville says that "a monopoly is the exclusive right granted to one person or class of persons of something which was before of common right." In States in which there is no constitutional inhibition against exclusive grants, privileges or immunities, it has been a common legislative practice to make grants of this kind, such as to water companies, bridge and ferry companies, turnpikes, and railroads, market houses and slaughter houses, and in such cases monopolies were clearly created, and Judge Somerville further says in this opinion that the fact that the Legislature could make such irrevocable and exclusive grants was no doubt a reason why the organic law was made to prohibit such grants in the future. In the struggling infancy of the States the temptation has been great to offer exclusive grants as a reward for the investment of capital, but that it now becomes manifest that they have proven iron bands to fetter the growth of public enterprise, industry and commerce. Free competition in all departments of commercial traffic is justly deemed to be the life of the people's prosperity. There has always been a limitation to the recognized power to make a monopoly of any trade to be conducted by the State or by private individuals or corporations. In all parts of the civilized world the transportation of mails has become a government monopoly, and in Europe for the most part railroads and telegraph lines are in the hands of the government, and it has been hinted by the Supreme Court of the United States that it would be a legitimate assumption of power for the United States to make a government monopoly of the management of railroads and telegraph lines, and appropriate to its use the existing lines of railroads and telegraph companies.—Pensacola R. R. Co. v. Wes. Un. Co., 96 U. S., 1. They are all common means of intercourse and communication among people of different countries, and may very properly compare with the government control of highways on land and water. The application of this principle to practical politics would be likely to result in the abuse of it; it might be in America as it is in Europe, that a monopoly would be created to increase revenue rather than to keep the wheels of commerce going; but if the conflicts between labor and capital continue to increase in the future as they have in the past it is very probable that the organic and statute laws of the Federal Government and of the several States will be changed so as to place the railroads, telegraph and telephone lines in the hands of the National Government.

Cornering the market signifies a combination of one or more persons called "bulls," who are "long" of certain stocks or securities, to compel other persons called "bears," who are "short" of that stock or commodity, to pay certain price for the same; in short, it is a combination to force a fictitious and unnatural rise or decline in the market.—Dos Passos, on Stockbrokers, 454; Tiedeman's Lim. Pol. Pow., 248.

Any combination to raise the prices of necessaries of life was unlawful and illegal at common law, but the modern ideas of trade have abrogated the common law doctrine so far as to make these offenses a crime, but it is not unabrogated so far as to make the combination unlawful, such as that contracts based on it can be enforced even now. A combination to absorb a particular staple or article of commerce essential to the health of the community is invalid, and would seem should be made a crime. Everyone should be left free to do as he pleases if he does not thereby deny others the equal freedom. Public policy and public safety require the prohibition of all combinations which deny or deprive the citizens of the necessaries of life. By statutes in Alabama it

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ever remain subject to revocation, alteration or amendment.

SEC. 23. That the exercise of the right of eminent domain shall never be

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SEC. 24. That the exercise of the right of eminent domain shall never be

is made a crime to form combinations, trusts or pools to regulate or fix the price of any article or commodity which is to be sold in the State, and it is also made a crime for any corporation chartered under the laws of this State, or any officer or agent of such corporation, to enter into a combination with another corporation with the intent to place the management and control of such corporation in the hands of others so as to limit or fix the price, restrict or diminish manufacture, sale, etc., ot articles of commerce.—Code 5557, 5558. But so far as known there has never been an indictment or prosecution under this statute.

At common law a general right to buy and sell was recognized, yet certain sales were held to be illegal and punished as crimes, which sales are now, if not legal, are acknowledged and treated in the commerce as legitimate transactions. Transactions which are now considered legitimate, such as cornering the market, or buying up all the corn or wheat, and in consequence causing a rise in value, at common law were misdemeanors, denominated forestalling, regrating and engrossing, which were offenses against public trade. There was at one time a statute in this State against regrating, an offense or crime not now heard of; it is defined to be the buying of corn or other dead victual in any market, and selling it again in the same market or within four miles of the place; engrossing was defined to be getting into one's possession or buying up large quantities with intent to sell again. —See 4 Bl. Com., 154; Russell on Crime, 168; Bishop's Crim. Law, 968, for nature and definition of this offense.

Mr. Bishop says that regrating is not a crime in the United States, but that forestalling and engrossing may be criminal offenses in this country; all combinations in restraint of trade. both at common law and in this country, are unlawful, and contracts founded on them will not be enforced.—1 Bl. Com., 150; Benjamin on Sales, 799.—See Sec. 103, p. 61.

Whether the Legislature could make dueling a disqualification for holding office is not certain.—In Re Dorsey, 7 Port., 293.

A statute authorizing certain persons to carry on a lottery, held a violation of the Constitution.—Horst v. Moses, 48 Ala., 129.

A statute establishing a bonus and commutation of taxes held valid.—Daughdrill v. Ala. Co., 31 Ala., 91.

A corporation is not a citizen within the meaning of this provision of the Constitution. —Am. Co. v. Wes. Un. Co., 67 Ala., 26.

A statute regulating immigration and emigration held void.—Joseph v. Randolph, 71 Ala., 499.

Foreign corporations may be prohibited from doing business in the State.—Am. Co. v. Wes. Un. Tel. Co., 67 Ala., 26.

A statute requiring county to supply citizens of the county with mortgage blanks held valid. —Lee v. Lide, 111 Ala., 126.

A statute providing the death penalty as exclusive punishment for the crime of murder committed by a convict under life sentence is not class legislation.—Williams v. State, 130 Ala., 31.

Statutes regulating markets are not class legislation.—Ex parte Byrd, 84 Ala., 17.

Statutes authorizing attorney's fees to be taxed as a part of the costs in certain cases held void.—S. & N. R. Co. v. Morris, 65 Ala., 193.

Section 877 of the Code of 1896, authorizing the assignment in writing of claims against railroads, is not in violation of this provision of the Constitution.—L. & N. R. Co. v. Landers, 135 Ala., 504.

Nor any law making irrevocable grants of special privileges or immunities.—Daughdrill v. Ala. Life Ins. Co., 31 Ala., 91; Sadler v. Langham, 34 Ala., 311; Clark v. Mobile School Commissioners, 36 Ala., 621; Carter v. Coleman, 84 Ala., 256.

Statutes prohibiting intermarriage between whites and blacks are not unlawful discriminations.—Green v. State, 58 Ala., 190; Pace's case, 69 Ala., 231; s. c., 106 U. S., 583.

Statutes requiring one class of litigants to pay attorney's fees while not requiring it of others are void.—Randolph v. Builders' Co., 106 Ala., 511; Morris' case, 65 Ala., 199; Smith's case, 75 Ala., 451; Baldwin's case, 85 Ala., 627; Brown's case, 87 Ala., 370.

Foreign corporations may be discriminated against as to doing business in the State.—67 Ala., 26.

A statute giving justices jurisdiction of actions against railroads for an amount greater than against individuals was held to be a discrimination and void in Brown's case, 87 Ala., 370, but this case was held to be dicta in Whitehead's case, 109 Ala., 495.

Employes of railroads may be exempt from road duty.—Johnson v. State, 88 Ala., 176.

The revenue laws cannot discriminate against national banks.—Moog v. Randolph, 77 Ala., 601.

An ordinance or statute levying a tax on nonresident breweries or agencies, while domestic ones are exempt is void.—Cullman v. Arndt, 125 Ala., 581.

[SEC. 23.]—

All kinds of real property or interests therein may be taken under the right of eminent domain, not only the land itself, but anything

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abridged nor so construed as to prevent the Legislature from taking the property and franchises of incorporated companies, and subjecting them to public use in the same manner in which the property and franchises of individuals are taken and subjected; but private property shall not be taken for, or applied to public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for

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abridged, nor so construed as to prevent the General Assembly from taking the property and franchises of incorporated companies, and subjecting them to public use the same as individuals; but private property shall not be taken or applied for public use, unless just compensation be first made therefor; nor shall private property be taken for private use, or for the use of corporations other than municipal, without the consent of the owner.

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which may constitute a part of it, such as buildings, streams of water, minerals, timber, but no more of the property can be taken than is necessary to serve the public purpose for which it is condemned.—Tiedeman's Lim. Pol. Pow., 391, 392; In Re. Albany St., 11 Wend., 149; (25 Am. Dec., 618.)

Mr. Tiedeman says that the right of confiscation of private lands for public purposes is called the right of eminent domain, and Mr. Cooley says that the right of eminent domain is "that superior right of property pertaining to the sovereignty by which the private property acquired by its citizens under its protection may be taken or its use controlled for the public benefit without regard to the wishes of the owner."—Cooley Const. Lim., 649. Mr. Tiedeman criticizes Mr. Cooley's definition of eminent domain and suggests the following as more appropriate: "Eminent domain is the superior right of the State to appropriate for public use private lands within its borders upon payment of the proper compensattion for the property taken. The exercise of the right of eminent domain is prima facie in the Legislature; the necessity for appropriating is a legislative and not a judicial question."—Tiedeman's Lim. Pol. Pow., 372, 373.

Grants of the right of eminent domain, like grants of corporate power, are in derogation of common rights, and are to be strictly construed.—Currier v. Marietta R. R. Co., 11 Ohio, 228; Tiedeman's Lim. Pol. Pow., 378.

It is difficult to say what is the definite and full meaning of the term public purpose, or public use. There are many purposes and uses which are well recognized as public, while there are others that it is difficult to say whether they are public or private uses.—Tiedeman's Lim. Pol. Pow., 381, 382; Cooley on Const. Lim., 660, 661; Sadler v. Langham, 34 Ala., 311.

The term "public use" probably once meant the use of some governmental agency, but it has been broadened and extended until the term may now be said to be synonomous with public good.—Beekman v. Saratoga R. R. Co., 3 Paige, 35; (22 Am. Dec., 679.)

In order to constitute a taking of property within the meaning of eminent domain, it is not necessary that there should be actual or physical taking of the land. The flooding of lands, appropriation of water grants and damages upon the riparian owners, and injury to adjoining property which is caused by the change in the grade or character of streams or streets, was held to be within the meaning of the Constitution, though the authorities are not uniform as to this proposition.—Pumpelly v. Green Bay Co., 13 Wall., 166; Gozzler v. Georgetown, 6 Wheat., 593; Mont. v. Maddox. 89 Ala., 181, which case modified Townsend's case, 80 Ala., 489, and 84 Ala., 478; Story v. N. Y. Elev. R. R. Co., 90 N. Y., 122-145; Tiedeman's Lim. Pol. Pow., 409.

Whatever is beneficially employed for the community is a public use.—Aldridge v. Tuscumbia R. Co., 2 S. & P., 199.

Some things are per se public, others are pronounced such.—Moore v. Wright, 34 Ala., 330.

Courts are the judge as to whether a use is public.—Moore v. Wright, 34 Ala., 330.

A telegraph line is a public utility.—M. & O. R. Co. v. Post. Co., 120 Ala., 21.

The taking of water to supply a city is a public use.—Stein v. Burden, 24 Ala., 130; Stein v. Ashley, 24 Ala., 521; Burden v. Stein, 27 Ala., 104.

Also to run a public grist mill.—Sadler v. Langham, 34 Ala., 311.

Also land for plank road or canal.—Sadler v. Langham, 34 Ala., 311.

Right extends to all property, whether under mortgage or owned by chartered corporation.—A. & F. R. Co. v. Kenny, 39 Ala., 307; M. & C. R. Co. v. B. S. & T. R Co., 96 Ala., 571.

But property and franchises of a corporation, taken by it for public use, may be again taken for public use by the Legislature.—A. & C. R. Co. v. J. G. & A. R. Co., 82 Ala., 297.

Right may be given to railroad company.—Aldridge v. Tuscumbia R. Co., 2 S. & P., 199; Davis v. Tuscumbia R. Co., 4 S. & P., 421; Jones v. N. O. R. Co., 70 Ala., 227; M. S. R. Co. v. Sayre, 72 Ala., 443.

Compensation must be made before or at the time of taking, unless prepayment is waived.—N. O. R. Co. v. Jones, 68 Ala., 48; s. c., 70 Ala., 227; M. S. R. Co. v. Sayre, 72 Ala., 443; City Council v. Townsend, 80 Ala., 489; s. c., 84 Ala., 478; Faust v. Mayor, 83 Ala., 279; Postal Tel C. Co. v. A. G. S. R. Co., 92 Ala.,

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the use of corporations, other than municipal, without the consent of the owner; provided, however, the Legislature may by law secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exer-

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*Provided, however,* that the General Assembly may, by law, secure to persons or corporations the right of way over the lands of other persons or corporations, and by general laws provide for and regulate the exercise by persons and corporations of the rights herein reserved;

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331; A. M. Ry. Co. v. Newton, 94 Ala., 443; Highland Ave. & B. R. Co. v. Matthews, 99 Ala., 24.

And this applies to the State itself.—Smith v. Inge, 80 Ala., 283.

The crossing of one railroad by another is a "taking."—M. & G. Ry. Co. v. A. M. Ry. Co., 87 Ala., 501; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala., 571; See citations to Art. XIV., Sec. 7.

Considerations governing compensations.—A. & F. R. Co. v. Burkett, 46 Ala., 569.

Owner of a ferry cannot claim compensation for loss of business from the building of a bridge.—Dyer v. Tuscaloosa Bridge Co., 2 Port., 296.

Private property may now be taken for private way, compensation being first made.—State v. County Commissioners, 83 Ala., 304.

Appeal; trial by jury.—M. S. Ry. Co. v. Sayre, 72 Ala., 443.

Just compensation includes not only the value of the parcels actually taken, but the injury to the remaining lots or parcels, and if the way or ingress and egress are interrupted, this forms a part of the injury for which compensation must be made.—Comm'rs v. Street, 116 Ala., 22; Hooper v. Savannah R. Co., 69 Ala., 529.

Section 1391 of the Code of 1896, which provides that the owner shall receive compensation for the land taken, in proceedings establishing public roads, is not in contravention of this provision.—Commissr's v. Street, 116 Ala., 22.

The crossing of a company invested with the right of eminent domain over the right of way of another who owns only an easement, is the taking of private property.—Birmingham Traction Co. v. Birmingham Ry. Co., 119 Ala., 137; Ib., 119 Ala., 129.

Constitution compels all corporate bodies, public or private, all individuals armed with the power of eminent domain and the State and all its instrumentalities to first make just compensation.—Birmingham Co. v. Birmingham Co., 119 Ala., 129.

The duty is clearly expressed and includes any and every taking of private property, without regard to the agency or instrumentality through which it is taken.—Birmingham Co. v. Birmingham Co., 119 Ala., 129.

City charter authorizing the levy against adjoining property, of taxes to improve streets, not to exceed in amount one-fourth the cost of improvement is not violative of this provision.—City of Montgomery v. Birdsong, 126 Ala., 633.

The owner has a right to go into equity and enjoin proceeding unless compensation is first made.—E. & W. R. Co. v. E. T. V. & G. R. Co., 75 Ala., 280; Birmingham Co. v. Birmingham Co., 119 Ala., 129.

The right may be exercised to condemn lands for public mills or for dams across streams.—Folmer v. Folmer, 68 Ala., 120; 71 Ala., 136; McCulley v. Cunningham, 96 Ala., 583; Bottoms v. Brewer, 54 Ala., 288.

Equity will enjoin the taking of land without the consent of the owner or legal proceeding.—Mobile Co. v. Amer. Co., 123 Ala., 145; Birmingham Co. v. Birmingham Co., 119 Ala., 129.

Courts will thus prevent the abuse of the power of eminent domain without reference to the legal remedy or irrevocable damages.—Wes. Ry. v. Gr. Trunk Co., 96 Ala., 272.

If they require compensation to be made or secured, though it is in the way of betterment or improvement of the property, but the exaction from the owner of an amount in substantial excess of the benefits accrued from them would be, to the extent of the excess, a taking under the guise of taxation and without compensation, and therefore in violation of the bill of rights.—Norwood v. Baker, 172 U. S., 269; Mayor v. Klein, 89 Ala., 461.

The "value of the land taken" was held to be equivalent to "damage sustained" or "just compensation."—Com. of Colbert Co. v. Street, 116 Ala., 28.

The provision as to appeals in condemnation cases is self-executing.—Woodward Iron Co. v. Cabaniss, 87 Ala., 328.

A telegraph company may exercise the right of eminent domain against a railroad company.—M. & O. R. Co. v. Post. Tel Co., 120 Ala., 21.

One railroad Co. may exercise it to cross another railroad Co.—Anniston Co. v. Jacksonville Co., 82 Ala., 297; 101 Ala., 331; 96 Ala., 571.

Whether a corporation has the power to condemn is a question for court and not for jury.—London v. Sample Co., 91 Ala., 606.

The Legislature may authorize foreign corporation to exercise the power.—Col. Co. v. Long, 121 Ala., 245.

A corporation without authority cannot exercise right.—119 Ala., 105.

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cise by persons and corporations of the rights herein reserved; but just compensation shall, in all cases, be first made to the owner; and, provided, that the right of eminent domain shall not be so construed as to allow taxation or forced subscription for the benefit of railroads or any other kind of corporations, other than municipal, or for the benefit of any individual or association.

SEC. 24. That all navigable waters shall remain forever public highways, free to the citizens of the State and the United States, without tax, impost or toll; and that no tax, toll, impost or wharfage shall be demanded or received from the owner of any merchandise or commodity for the use of the shores or any wharf erected on the shores, or in or over the waters of any navigable stream, unless the same be expressly authorized by law.

SEC. 25. That the citizens have a right, in a peaceable manner, to assemble together for the common good, and to apply to those invested with the power of government for redress of grievances or other purposes, by petition, address or remonstrance.

SEC. 26. That every citizen has a right to bear arms in defense of himself and the State.

SEC. 27. That no standing army shall be kept up without the consent of the Legislature, and, in that case, no appropriation for its support shall be made for a longer term than one year; and the military shall, in all cases, and at all

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but just compensation shall, in all cases, be first made to the owner. *And provided,* that the right of eminent domain shall not be so construed as to allow taxation, or forced subscription, for the benefit of railroads, or any other kind of corporations other than municipal, or for the benefit of any individual or association.

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SEC. 28. That no standing army shall be kept up without the consent of the General Assembly; and, in that case, no appropriation for its support shall be made for a longer term than one year; and the military shall, in all cases, and at

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The purpose of condemnation is to effect an involuntary transfer of land.—London v. Sample Co., 91 Ala., 606.

[SEC. 24.]—

What are navigable waters.—85 Ala., 88; 87 Ala., 154; 105 Ala., 397; 82 Ala., 167; 86 Ala., 88.

The obstruction of navigable waters is a nuisance.—87 Ala., 154; 86 Ala., 88; 112 Ala., 80.

The bed of a navigable stream and the fish and oysters therein are the property of the State.—State v. Harrub, 95 Ala., 176.

Party has no right to maintain ferry where public road crosses stream without license, but may at any other point on stream.—Tuscaloosa Co. v. Foster, 132 Ala., 392.

If there be a custom under the Constitution as to the shores of Mobile River and Mobile Bay, held that parties had a complete and adequate remedy at law to recover lands along such shores.—Turner v. Mobile, 135 Ala., 73.

[SEC. 26.]—

Law prohibiting the carrying of weapons concealed is a mere regulation and not violative of the Constitution.—State v. Reid, 1 Ala., 612.

Law making it an offense to point firearms at another does not violate; has no application to cases of self-defense.—Davenport v. State, 112 Ala., 49.

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times, be in strict subordination to the civil power.

SEC. 28. That no soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor, in time of war, but in a manner to be prescribed by law.

SEC. 29. That no title of nobility or hereditary distinction, privilege, honor or emolument shall ever be granted or conferred in this State; and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

SEC. 30. That immigration shall be encouraged; emigration shall not be prohibited, and no citizen shall be exiled.

SEC. 31. That temporary absence from the State shall not cause a forfeiture of residence once obtained.

SEC. 32. That no form of slavery shall exist in this State; and there shall not be any involuntary servitude, otherwise than for the punishment of crime, of which the party shall have been duly convicted.

SEC. 33. The privilege of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult or other improper conduct.

SEC. 34. Foreigners who are, or may hereafter become, *bona fide* residents of this State, shall enjoy the same rights in respect to the possession, enjoyment and inheritance of property, as native-born citizens.

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all times, be in strict subordination to the civil power.

SEC. 29. That no soldier shall, in time of peace, be quartered in any house, without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

SEC. 30. That no title of nobility, or hereditary distinction, privilege, honor, or emolument, shall ever be granted or conferred in this State; and that no office shall be created, the appointment to which shall be for a longer time than during good behavior.

SEC. 31. That immigration shall be encouraged, emigration shall not be prohibited, and that no citizen shall be exiled.

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SEC. 34. The right of suffrage shall be protected by laws regulating elections, and prohibiting, under adequate penalties, all undue influences from power, bribery, tumult, or other improper conduct.

SEC. 35. The people of this State accept as final the established fact that from the Federal Union there can be no secession of any State.

SEC. 36. Foreigners who are, or may hereafter become, *bona fide* residents of this State shall enjoy the same rights in respect to the possession, enjoyment, and inheritance of property, as native-born citizens.

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[SEC. 30.]

The State has no right to compel its citizens to emigrate, unless it be as a punishment for crime committed. It may persuade and entreat for that purpose, but should not compel.—Tiedeman's Lim. Pol. Pow., 143.

License cannot be required of a person contracting to carry away laborers.—Joseph v. Randolph, 71 Ala., 499.

[SEC. 32.]—

Convict, violating labor contract for fine and costs, may be punished criminally.—Smith v. State, 82 Ala., 40; Wynn v. State, 82 Ala., 55.

Law taxing an attorney's fee as costs against railroad in certain cases violates.—S. & N. R. Co. v. Morris, 65 Ala., 193.

Buying and selling cotton in the seed in certain localities may be prohibited.—Mangan v. State, 76 Ala., 60.

*State and County Boundaries.*

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SEC. 35. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property, and when the government assumes other functions, it is usurpation and oppression.

SEC. 36. That this enumeration of certain rights shall not impair or deny others retained by the people; and, to guard against any encroachments on the rights herein retained, we declare that everything in this Declaration of Rights is excepted out of the general powers of government, and shall forever remain inviolate.

## ARTICLE II.

### STATE AND COUNTY BOUNDARIES.

SEC. 37. The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of

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SEC. 37. That the sole object and only legitimate end of government is to protect the citizen in the enjoyment of life, liberty and property; and when the government assumes other functions, it is usurpation and oppression.

SEC. 38. No educational or property qualification for suffrage or office, nor any restraint upon the same on account of race color, or previous condition of servitude, shall be made by law.

SEC. 39. That this enumeration of certain rights shall not impair or deny others retained by the people.

## ARTICLE II.

### STATE AND COUNTY BOUNDARIES.

SECTION 1. The boundaries of this State are established and declared to be as follows, that is to say: Beginning at the point where the thirty-first degree of

[SEC. 35.]—

The ideas and customs which suggested sumptuary laws have long since passed out; there is and should be no attempt to justify them in this age. The right of every man to do what he will with his own, not interfering with the reciprocal rights of others, is accepted among the fundamentals of our law.—Cooley Const. Law, 385.

Sumptuary laws have existed in many countries, but have never been very numerous in England and America. Some of these laws prescribed the number of courses permissible at dinner or supper, while others directed the style or quality of dress to be worn by the citizens. Mr. Smith, speaking of such laws, said it was the highest impertinence and presumption of kings and ministers to pretend to watch over the economy of private citizens and to restrain their expenses either by sumptuary laws or by prohibiting the importation of foreign luxuries.—Adam Smith's Wealth of Nations, B. 2, C. 3; see 4 Bl. Com., 170.

To preserve the equality of citizens in public and private rights.—Horst v. Moses, 48 Ala., 129.

[SEC. 36]—

Enumeration cannot be construed to disparage or deny other rights retained by the people.—Ex parte Dorsey, 7 Port., 293.

A statute placing the burden of proof of insanity on accused, as a defense is not violative of any constitutional right.—Martin v. State, 119 Ala., 1.

A statute providing that a convict sentenced to imprisonment for life committing murder in first degree must suffer death is valid.—Williams v. State, 130 Ala., 31.

All power resides in the Legislature, except the limitations imposed by the Constitutions of the State and United States.—Sheppard v. Dowling, 127 Ala., 1.

Legislature has a right to commit the liquor traffic to counties and towns.—Sheppard v. Dowling,' 127 Ala., 1.

Statute requiring parties claiming land adversely to file claim is not unconstitutional.—Scales v. Doe ex dem. Otts, 127 Ala., 582.

[SEC. 37.]—

In Howard v. Ingersoll, 17 Ala., 780, the Supreme Court of Alabama held that the boundary line between Alabama and Georgia was Low Water Mark on the west side of Chattahoocie River, from the Florida line to the Great Bend above the mouth of Echee Creek. On appeal to the Supreme Court of the United States, the case was reversed, the Supreme Court of the United States holding that it was not Low Water Mark but it was the line which was washed by the waters of

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north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southwardly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning; provided that the limits and jurisdiction of this State shall extend to and include any other land and territory hereafter acquired, by contract or agreement with other States or otherwise, although such land and territory are not included within the boundaries hereinbefore designated.

SEC. 38. The boundaries of the several counties of this State, as they now exist, are hereby ratified and confirmed.

SEC. 39. The Legislature may, by a vote of two-thirds of each House thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new county shall

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north latitude crosses the Perdido river; thence east, to the western boundary line of the State of Georgia; thence along said line to the southern boundary line of the State of Tennessee; thence west, along the southern boundary line of the State of Tennessee, crossing the Tennessee river, and on to the second intersection of said river by said line; thence up said river to the mouth of Big Bear creek; thence by a direct line to the northwest corner of Washington county, in this State, as originally formed; thence southerly, along the line of the State of Mississippi, to the Gulf of Mexico; thence eastwardly, including all islands within six leagues of the shore, to the Perdido river; thence up the said river to the beginning.

SEC. 2. The boundaries of the several counties of this State, as heretofore established by law, are hereby ratified and confirmed. The General Assembly may, by a vote of two-thirds of both Houses thereof, arrange and designate boundaries for the several counties of this State, which boundaries shall not be altered, except by a like vote; but no new

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the river wherever it covers the bed of the river within its banks—that is, to the edge of the river.—Howard v. Ingersoll, 13 How., 381.

In the case of Alabama v. Georgia, 23 How., 505, it was held that the bed of the Chattahoochie River was territory belonging to the State of Georgia, and that the bed of the river was that portion of the soil alternately covered and left bare between the top of the two banks without reference to overflows or extreme low water, and where the western bank is not defined, it would be a line up the west side of the river made by the average and mean stage of the water, but by the contract of cession the navigation of the river was free to both States.

[SEC. 39.]—

Where an amendment is made to bill providing for change of boundaries, and the record does not show what the amendment was, it will be presumed that it was matter which did not require a two-thirds vote of the house in which amendment was made.—Jackson v. State 131 Ala., 21.

When a city or town is selected as the county seat, the boundaries of such city or town as they then exist become the boundary of the county seat, and this is true of the court house site. The phrase "court house site" as used in the Constitution cannot be held to mean the precise lot of ground upon which the building is located.—Matkin v. Marengo Co., 134 Ala., 275.

By this section of the Constitution it was intended that the court house should not be removed from the town or city except as provided in this section, it was not intended that the site within such city or town could not be changed or the court house moved to another within the city.—Matkin v. Marengo Co., 134 Ala., 275.

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be formed hereafter of less extent than six hundred square miles, and no existing county shall be reduced to less than six hundred square miles; and no new county shall be formed unless it shall contain a sufficient number of inhabitants to entitle it to one Representative under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants to entitle such county or counties, each, to separate representation; provided, that out of the counties of Henry, Dale and Geneva a new county of less than six hundred square miles may be formed under the provisions of this article, so as to leave said counties of Henry, Dale and Geneva with not less than five hundred square miles each. (*a*)

SEC. 40. No county line shall be altered or changed, or in the event of the creation of new counties shall be established, so as to run within seven miles of the county court house of any old county.

SEC. 41. No court house or county site shall be removed (*b*) except by a majority vote of the qualified electors of said county, voting at an election held for such purpose, and when an election has once been held no other election shall be held for such purpose until the expiration of four years; provided, that the county site of Shelby county shall remain at Columbiana, unless removed by a vote of the people, as provided for in an act entitled, "An Act to provide for the permanent location of the county site of Shelby county, Alabama, by a vote of the qualified electors of said county," approved the 9th day of February, 1899, and the act amendatory thereof, approved the 20th day of February, 1899, or by an election held under the provisions of this article.

## ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

SEC. 42. The powers of the govern-

(a) County of Houston formed therefrom Acts 1903, p. 44.
(b) See Acts 1903, p. 117.

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counties shall be hereafter formed of less extent than six hundred square miles; and no existing county shall be reduced to less extent than six hundred square miles, and no new county shall be formed which does not contain a sufficient number of inhabitants to entitle it to one Representative, under the ratio of representation existing at the time of its formation, and leave the county or counties from which it is taken with the required number of inhabitants entitling such county or counties to separate representation.

## ARTICLE III.

DISTRIBUTION OF POWERS OF GOVERNMENT.

SECTION 1. The powers of the govern-

[SEC. 42.]—
The separate departments of the Government for the exercise of the legislative, executive

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ment of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a sep-

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ment of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a sep-

and judicial powers are termed checks and balances of the republican form of government. Upon judicial action there is the legislative check and the power of the latter to prescribe rules for the courts and to restrict authority, and the executive check upon the judicial to refuse to enforce judgments which are in excess of the jurisdiction. Upon the executive power is the legislative check, to restrain the action of the former, and upon it is the judicial check of the power to punish the executive department for excess of executive authority. While the legislative department had a check upon both the executive and the judicial departments in the power to impeach the members of the legislative department for illegal or oppressive actions, or failure to perform official duties, or in refusing to execute the legislative enactments.—Cooley Const. Lim., 44.

Distribution of powers.—Ex parte Screws, 49 Ala., 57; Scott v. Strobach, 49 Ala., 477; Fox v. McDonald, 101 Ala., 51.

## LEGISLATIVE POWER.

Legislature exclusive judge of what is a public use.—Sadler v. Langham, 34 Ala., 311.

Controls domestic affairs of the State.—Ex parte Norton, 44 Ala., 177.

Determines who are its members.—Ex parte Screws, 49 Ala., 57; Scott v. Strobach, 49 Ala., 477.

May remove administration of estate to another county without invading the judiciary.—Wright v. Ware, 50 Ala., 549.

And transfer a cause to another court of coordinate jurisdiction.—Ex parte Hickey, 52 Ala., 228.

And compromise and settle past due taxes.—Tallassee Mfg. Co. v. Glenn, 50 Ala., 489.

And require a license or certificate of fitness of locomotive engineers.—McDonald v. State, 81 Ala., 279; N. C. & St. L. Ry. Co. v. State 83 Ala., 71 (affirmed 128 U. S., 96); Smith v. State, 85 Ala., 341 (affirmed 124 U. S., 465); Baldwin v. State, 85 Ala., 619.

And empower administrator to sell lands to pay debts.—Holman v. Bank of Norfolk, 12 Ala., 369.

And regulate civil procedure, allowing real party in interest to intervene.—Perry v. Cabaniss, 70 Ala., 253.

And declare that only certain of the State's liabilities shall be adjusted on a given basis.—State v. Cobb, 64 Ala., 127.

Extent of power to pass special laws for the sale of the property of minors, deceased persons, etc.—Chappell v. Williamson, 49 Ala., 153; Todd v. Flournoy, 56 Ala., 99; Watson v. Oates, 58 Ala., 647; Tindal v. Drake, 60 Ala., 170; Bruce v. Bradshaw, 69 Ala., 360; Munford v. Pearce, 70 Ala., 452.

Cannot declare, in opposition to established procedure, that no appeal shall be discontinued except on motion.—Carleton v. Goodwin, 41 Ala., 153.

Nor that conveyance already executed is invalid because not according to forms then prescribed.—Ala. L. I. & T. Co. v. Boykin, 38 Ala., 510.

Nor declare certain judgments void.—Sanders v. Cabaniss, 43 Ala., 173; Weaver v. Lapsley, 43 Ala., 224. But see Ex parte Bibb, 44 Ala., 140; Ex parte Norton, 44 Ala., 177.

Nor authorize commissioners to treat a sale as rescinded under certain conditions.—Hardy v. Bank, 15 Ala., 722.

Nor remit fines.—Haley v. Clark, 26 Ala., 439.

But may remit penalty for failure to pay taxes.—M. & G. R. Co. v. Peebles, 47 Ala., 317.

And cure defects in the organization of private corporations.—C. A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala., 120.

And exercise certain powers of forfeiture.—M. & O. R. Co. v. State, 29 Ala., 573.

And bind the State by contract.—T. & C. R. Co. v. Moore, 36 Ala., 371; State v. Cobb, 64 Ala., 127.

And establish rules of evidence within constitutional limitations.—Stoudenmire v. Brown, 48 Ala., 699.

As to delegation of power, see Art. IV., Sec. 1, and Art. XI., Const., 1875.

## EXECUTIVE POWER.

Power of appointment is given, not inherent.—Fox v. McDonald, 101 Ala., 51.

Governor has no general authority to contract in the name of the State.—State v. Cobb, 64 Ala., 127.

Must conform to legislative will.—Ex parte Screws, 49 Ala., 57.

Law prohibiting distillation of grain except under the direction of the Governor is no invasion of legislative functions.—Ingram v. State, 39 Ala., 247.

Governor alone has power to remit fines.—Haley v. Clark, 26 Ala., 439.

Mandamus lies to compel Governor to exercise ministerial functions.—T. & C. R. Co. v. Moore, 36 Ala., 371. Doubted in State v. Cobb, 64 Ala., 127; Higdon v. Jelks, 138 Ala., 115; Chisholm v. McGehee, 41 Ala., 197.

## JUDICIAL POWER.

Judiciary declares what the law is, Legislature what it shall be.—Ala. L. & I. Co. v. Boykin, 38 Ala., 510. The forfeiture of a charter is the province of the courts.—M. & O. R. Co. v. State, 29 Ala., 573.

Trial of the constitutional qualifications of a judge elected by the Legislature is judicial, not political.—State v. Porter, 1 Ala., 688 (overruling State v. Paul, 5 S. & P., 40).

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arate body of magistracy, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

SEC. 43. In the government of this State, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.

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arate body of magistry, to wit: Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.

SEC. 2. No person, or collection of persons, being of one of those departments, shall exercise any power properly belonging to either of the others, except in the instances hereinafter expressly directed or permitted.

## ARTICLE IV.

LEGISLATIVE DEPARTMENT.

SEC. 44. The legislative power of this

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LEGISLATIVE DEPARTMENT.

SECTION 1. The legislative power of

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Cannot control the Speaker of House in the exercise of his functions.—Ex parte Echols, 39 Ala., 698.

Will not condemn legislative construction of a contract unless clearly wrong.—Ex parte S. & G. R. Co., 45 Ala., 696.

Can only interfere to control legislative mistakes when they involve a disregard of some constitutional limitations; cannot interfere with the executive except as to purely ministerial duties.—Ex parte Screws, 49 Ala., 57; Scott v. Strobach, 49 Ala., 477.

The Constitution does not inhibit retrospective legislation, yet it does not authorize expository statutes; to declare what the law is, is a judicial power; to declare what the law shall be, is legislative.—Lindsay v. U. S. Co. 120 Ala., 156.

The Legislature has no authority to direct the judiciary how to interpret the law.—Lindsay v. U. S. Co., 120 Ala., 156; Carlton v. Goodwin, 41 Ala., 153; Ins. Co. v. Boykin, 38 Ala., 110.

[SEC. 43.]—

The Legislature has no power to dictate to the judiciary how a law shall be construed.—Lindsay v. U. S. Assn., 120 Ala., 156.

The Legislature may authorize the nonresident personal representative to sell lands of an estate in Alabama.—Holman v. Bank, 12 Ala., 369.

Under prior Constitutions the Legislature could authorize the sale of lands.—Watson v. Oates, 58 Ala., 647.

The Legislature cannot provide for the setting aside of judgments, this is judicial in its province.—Sanders v. Cabaniss, 43 Ala., 173.

The Legislature may provide for the removal of administrations from one county to another.—Van Hoose v. Bush, 54 Ala., 342; Wright v. Ware, 50 Ala., 549.

It is not a judicial power to provide for the removal of causes.—Ex parte Hickey, 52 Ala., 228.

Whether a contract can be rescinded or not is a judicial question and not legislative.—Hardy v. Br. Bk., 15 Ala., 722.

The Legislature may appoint a trustee to execute a trust created by deed.—Tindall v. Drake, 60 Ala., 170.

The Legislature cannot remit fines and forfeitures; this is confided to the Governor.—Haley v. Clark, 26 Ala., 439.

The Legislature may authorize the Coroner to fill the office of Sheriff temporarily.—State v. Monk, 3 Ala., 415.

The Legislature may provide for the Governor to authorize the distillation of grain into spirituous liquors.—Ingram v. State, 39 Ala., 247.

The Legislature may authorize counties to establish stock law districts.—Stanfill v. Dallas Co., 80 Ala., 287; Dunn v. Wilcox, 85 Ala., 144.

The Legislature cannot delegate taxing power to school districts.—Schultes v. Eberly, 82 Ala., 242.

The authority to delegate taxing power must be clear and unequivocal.—Baldwin v. City Council, 53 Ala., 437.

The Legislature may change county sites at pleasure.—Ex parte Hill, 40 Ala., 121; Clark v. Jack, 60 Ala., 271. Constitution of 1901 changes this provision.

[SEC. 44.]—

The American Legislatures only exercise a certain portion of the sovereign power; the absolute sovereignty is in the people, while the British Legislature is the sovereign power, and

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State shall be vested in a Legislature,

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this State shall be vested in a general

is above the Constitution, molds and modifies it as the needs of the time may require, but in America such a thing as unlimited power in any department is unknown. The American Legislature may exercise legislative power which the Parliament of Great Britain wields except in so far as it is restricted by the Constitution of the United States or the State Constitution. The whole law-making power of the State is committed to the Legislature, except where the power is expressly or impliedly withheld by the Constitution, therefore when we come to inquire whether a statute is constitutional it is for those who question its validity to show that it is invalid, but it is not necessary that legislative power as to a given subject must be expressly inhibited, it may be by implication. Every positive direction contains an implication against the contrary, and every form of government, the grant of legislative power itself; the organization of executive and judicial departments creates an implied limitation upon the law-making power.—Cooley Const. Lim., 106, 107; People v. Draper, 15 N. Y., 532.

The Constitution is a limitation, not a grant of power; legislative power is unlimited except as restrained by State or Federal Constitution.—Ex parte Dorsey, 7 Port., 293; State v. Reid, 1 Ala., 612; Ex parte Pickett, 24 Ala., 91; Stein v. Mayor, 24 Ala., 591; Noles v. State, 26 Ala., 31; Dorman v. State. 34 Ala., 216; Ingram v. State, 39 Ala., 249; A. & F. R. Co. v. Burkett, 42 Ala., 83; Gunter v. Dale Co., 44 Ala., 639; Ex parte S. & G. R. Co., 45 Ala., 696; Wright v. Ware, 50 Ala., 549; Board of Revenue v. Barber, 53 Ala., 589; Irwin v. Mayor, 57 Ala., 6; Harrison v. Grady, 57 Ala., 49; Williams v. State, 61 Ala., 33; Davis v. State, 68 Ala., 58; Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala., 120; Van Hook v. Selma, 70 Ala., 361; Mangan v. State, 76 Ala., 60; Moog v. Randolph, 77 Ala., 597; Ex parte Lusk, 82 Ala., 519; Schultes v. Eberly, 82 Ala., 242; Hare v. Kennerly, 83 Ala., 608; Mayor v. Klein, 89 Ala., 461; Johnson v. State, 91 Ala., 70; State v. Melvin, 95 Ala., 176; Jones v. Jones, 95 Ala., 443; Adams v. Creen, 100 Ala., 218; Smith v. Boutwell, 101 Ala., 373; Fox v. McDonald, 101 Ala., 51; Ex parte Sikes, 102 Ala., 173.

## LEGISLATIVE POWERS.

The presumption is that power has not been exceeded.—State v. Rogers, 107 Ala., 444.

The Constitution does not inhibit retrospective legislation, yet it does not authorize expository statutes; to declare what the law is, is a judicial power; to declare what the law shall be is legislative.—Lindsay v. U. S. Co., 120 Ala., 156.

The Legislature has no authority to direct the judiciary how to interpret the law.—Lindsay v. U. S. Co., 120 Ala., 156; Carlton v. Goodwin, 41 Ala., 153; Ins. Co. v. Boykin, 38 Ala., 110.

The Legislature cannot authorize commissioners to suspend or discontinue a law or to determine what police regulations shall or shall not obtain in a county.—Mitchell v. State, 134 Ala., 392.

The Legislature may make it a crime for a person to obtain board or lodging by means of fraud or misrepresentation.—Chauncey v. State, 130 Ala., 71; Ex parte King, 102 Ala., 182.

The Legislature may make a law to take effect upon the happening of a future event, and may delegate to the officer the power of determining when such event happens.—Hand v. Stapleton, 135 Ala., 156.

The Legislature may either extend the period of the statute of limitations or strike them down entirely, provided it does not destroy vested rights.—Scales v. Otts, 127 Ala., 582.

The Constitution is the only limitation upon the legislative power; aside from these limitations in the State and Federal Constitutions, the power of the Legislature has no bounds, it is as plenary as that of the British Parliament. Sheppard v. Dowling, 127 Ala., 6.

Under the Constitution of 1875 the removal of a court house was one of recognized legislative powers; the Constitution of 1901 now provides the manner of its removal.—State ex rel Porter v. Crook, 126 Ala., 600.

A statute to prevent live stock from running at large is not an unreasonable exercise of legislative power.—Shehane v. Bailey, 110 Ala., 308.

A statute making it a legal duty to perform a moral duty and imposing a penalty for failure, such as requiring mortgagee to satisfy mortgage on record is not unconstitutional.—Gay v. Rogers, 109 Ala., 624.

The Legislature cannot revive void acts of the municipalities if it could not authorize such originally.—Hewlett v. Camp, 115 Ala., 499.

The Legislature may prohibit the practice of medicine without a license, and require lawyers to pay a revenue license.—Cousins v. State, 50 Ala., 113; Goldthwaite's case, 50 Ala., 486.

The Legislature may prohibit hawking or peddling.—Shelton v. Mobile, 30 Ala., 540.

The Legislature cannot take away vested rights.—Coosa Co. v. Barclay, 30 Ala., 120.

A statute cannot derogate a vested right.—Aldridge v. Tuscumbia Co., 2 S. & P., 199.

The Legislature may repeal exemptions from public service.—Ex parte Tate, 39 Ala., 254.

Exemptions from jury or road duty may be repealed.—Dunlap v. State, 76 Ala., 460.

The Legislature can prescribe rules for the execution of wills.—Hoffman v. Hoffman, 26 Ala., 535.

which shall consist of a Senate and a assembly, which shall consist of a Senate

The Legislature may authorize settlements of insolvent estates.—Weaver v. Weaver, 23 Ala., 789.

The Legislature cannot make certain documents conclusive evidence.—Stoudenmire v. Brown, 48 Ala., 699; Doe v. Minge, 56 Ala., 121.

The Legislature cannot create a cause of action out of a past transaction if it did not exist before.—Coosa Co., v. Barclay, 30 Ala., 120; Fail v. Pressley, 50 Ala., 342.

Legislature may prohibit dealing in cotton in the seed in particular localities and during certain hours of the day.—Mangan v. State, 76 Ala., 60.

May require license of locomotive engineers.—McDonald v. State, 81 Ala., 279; N. C. & St. L. R. Co. v. State, 83 Ala., 71; (affirmed, 128 U. S. 96); Smith v. State, 85 Ala., 341; (affirmed, 124 U. S. 465); Baldwin v. State, 85 Ala., 619.

And of a physician.—Brooks v. State, 88 Ala., 122.

And of a lawyer.—Cousins v. State, 50 Ala., 113.

And of a dealer in fertilizers; requiring sacks to be tagged also.—Steiner v. Ray, 84 Ala., 93; Brown v. Adair, 104 Ala., 652.

May require a railroad to erect cattle-guards.—B. M. R. Co. v. Parsons, 100 Ala., 662.

May require railroad employes to be examined for color-blindness.—L. & N. R. Co. v. Baldwin, 85 Ala., 619; N. C. & St. L. R. Co. v. State, 83 Ala,. 71 (affirmed, 128 U. S. 96).

Power to pass special laws applicable to one or more designated counties or localities.—Holman v. Bank of Norfolk, 12 Ala., 369; Coltart v. Allen, 40 Ala., 155; Chappell v .Williamson, 49 Ala., 153; Wright v. Ware, 50 Ala., 549; Ex parte Hickey, 52 Ala., 228; Van Hoose v. Bush, 54 Ala., 342; Todd v. Flournoy, 56 Ala., 99; Watson v. Oates, 58 Ala., 647; Tindall v. Drake, 60 Ala., 170; Bruce v. Bradshaw, 69 Ala., 360; Munford v. Pearce, 70 Ala., 452; Stanfill v. Dallas Co., 80 Ala., 287; Dunn v. Wilcox Co., 85 Ala., 144; McGraw v. Co. Commrs., 89 Ala., 407; Spigener v. Reeves, 104 Ala., 437.

To pass "stock laws."—Stanfill v. Dallas Co., 80 Ala., 287; Spigener v. Reeves, 104 Ala., 437.

To pass special laws authorizing sales of property of infants, transfer of administration, etc.—Holman v. Bank of Norfolk, 12 Ala., 369; Coltart v. Allen, 40 Ala., 155; Campbell v. Williamson, 49 Ala., 153; Wright v. Ware, 50 Ala., 549; Ex parte Hickey, 52 Ala., 228; Van Hoose v. Bush, 54 Ala., 342; Todd v. Flournoy, 56 Ala., 99; Watson v. Oates, 58 Ala., 647; Tindall v. Drake, 60 Ala., 170; Bruce v. Bradshaw, 69 Ala., 360; Munford v. Pearce, 70 Ala., 452. (As to power since adoption of the Constitutions of 1875 and 1901, see Art. IV, Sec. 23.)

To provide for the removal of court house.—Ex parte Hill, 40 Ala., 121.

To dispense with formalities required by incorporation laws.—Central A. & M. Assn. v. Ala. Gold Life Ins. Co., 70 Ala., 120.

To authorize grant of new trials.—Ex parte Norton, 44 Ala., 177.

To provide for the punishment of offense partly perpetrated without the State.—Green v. State, 66 Ala., 40.

To change the garnishment law at pleasure.—Adams v. Creen, 100 Ala., 218.

To exclude, or impose restrictions, on foreign corporations.—Noble v. Mitchell, 100 Ala., 519 (affirmed, 164 U. S., 367). See Art. XIV., Sec. 4.

To control fine and forfeiture fund.—Herr v. Seymour, 76 Ala., 270; Sessions v. Boykin, 78 Ala., 328; Brown v. Parris, 93 Ala., 314; Harold v. Herrington, 95 Ala., 395.

To elect a county solicitor to perform duties of, and to the exclusion of the circuit solicitor.—Ex parte Lusk, 82 Ala., 519.

To bind the State by contract.—T. & C. R. Co. v. Moore, 36 Ala., 371; State v. Cobb, 64 Ala., 127.

To regulate occupations and businesses of all kinds; but all members of a particular class must be equally amenable to the regulations.—Mayor v. Yuille, 3 Ala., 137; Ex parte Marshall, 64 Ala., 266; S. & N. R. Co v. Morris, 65 Ala., 193; Smith v. L. & N. R. Co., 75 Ala., 449; Harrison v. Jones, 80 Ala., 412; McDonald v. State, 81 Ala., 279; Carter v. Coleman, 84 Ala., 256; L. & N. R. Co. v. Baldwin, 85 Ala., 619; Youngblood v. B. T. & S. Co., 95 Ala., 521.

Legislative power cannot be delegated except to counties and municipal corporations to a limited extent.—Clark v. Mobile, 67 Ala., 217; Schultes v. Eberly, 82 Ala., 242; Dunn v. Wilcox Co., 85 Ala., 144.

**The following are police powers:**

The police power of the State embraces the whole system of internal regulation by which the State preserves order, prevents crime, and establishes intercourse with citizens, and maintains good manners and prevents conflict of rights and uninterrupted enjoyment of the personal and property rights of the citizens. Bentham says that the police power may be divided into eight branches; first, police for the prevention of offenses; second, police for the prevention of calamities; third, police for the prevention of epidemic diseases; fourth, police for charity; fifth, police for interior communication; sixth, police for public amusements; seventh, police for recent intelligence; eighth, police for registration. All property and rights of the citizen are held subject to the general regulation necessary to the public good and welfare. Police power is the power of the Legislature to retain and establish wholesome and reasonable laws which the Legislature may judge to be for the common good and welfare of the State, and of the people, which are not in violation of the Constitution. It is the

power of the State to protect the lives, limbs, health and comfort of all persons; it is the power to enforce the maxim, *"sic utere tuo, ut alienum non laedas."* The police power rests primarily with the States, and not with the Federal Government; the Federal Government can only see that the States do not violate the Federal Constitution which forbids the States under cover of police power to invade the sphere of national sovereignty; for instance, the Federal Constitution forbids the States passing any law impairing the obligation of contracts, hence the State, under cover of police power, could not pass a law that would violate the obligation of contract, nor could the State enact a law which would interfere with interstate commerce, because such State would be in violation of the Federal Constitution. A State may, in the exercise of police powers, require railroad companies to fence their tracks, and may also regulate the grade of railways, and require railroads to ring bells and blow whistles on approaching public crossings or abrupt curves in their right of way.—Cooley Const. Lim., 706-717.

The State may provide for the destruction of private property to prevent the spread of fire, or the ravages of disease and pestilence, or the advance of a hostile army, or any other great public calamity—Cooley Const. Lim., 740; Saltpetre case, 12 Coke, 13; N. Y. v. Lord, 18 Wend., 126; Sorocco v. Geary, 3 Cal., 69; Print Works v. Lawrence, 21 N. J., 248.

A corporation can be subjected to a regulation which would not be applicable to an individual under like circumstance. The right of public provision and control over highways results from the power and duty of the State to provide for and to preserve them. This right is undenied as to ordinary highways, but it is denied by many that the right exists as to railways built and owned by private corporations. A railroad is public in part and private in part; it is public in that it may exercise the right of eminent domain; the State cannot confer that right upon private interest or private citizens for private purposes. A railroad from its very nature is an improved highway or means of rapid transportation, and the fact that its ownership is private does not change this public character. As to the stockholders of a railroad corporation, the property in the road is private property, yet it is subject to the lawful reserved rights of the public, and over the railroad as a highway, and in its relation to the public, the State has supervision and control, but over the rights of the stockholders, so far as their private rights in and to the property, the State has no greater power than over that of the private rights of any other individual.—Tiedeman's Lim. Pol. Pow., 596.

Railroads may be required to fence their tracks, and the law may regulate the speed or the kind and number of tracks to be used. It may regulate the grades of railways, and may make regulations to secure fair and impartial carriage of all persons and property, and they may also be required to draw the cars of other railroad companies as well as their own, and the Legislature may provide for the general supervision of the railroads by commissioners, appointed by the State and given full power to make inspection of the working and management of the railroads.—R. R. Co. v. Portland R. R. Co., 63 Me., 269; (18 Am. Rep., 208).

The State may provide for the apprehension of suspicious characters, those who are habitual drunkards, those whose photographs have a place in the rogue's gallery, common street beggars, common prostitutes, habitual disturbers of the peace, known pickpockets, gamblers, burglars, thieves, watch-stuffers, those who practice tricks or games or devices to swindle, and all suspicious persons who cannot give a reasonable account of themselves.—Morgan v. Nolte, 37 Ohio, 23; (41 Am. Rep., 485); Byers v. Commonwealth, 42 Pa., 96; World v. State, 50 Md., 54; Tiedeman's Lim. Pol. Pow., 125.

At common law a common scold and common barrator were indictable. The English statutes authorize summary proceedings against idlers, vagabonds, rogues and disorderly persons.—Stephens' Digest of Crim. Law, 193; Tiedeman's Lim. Pol. Pow., 126, 127.

Liberty means the right to use one's faculties in all lawful ways, to live and work when and as he pleases, to pursue any lawful calling or avocation, provided he thereby injures neither the public nor another.—People v. Marx, 99 N. Y., 377; Slaughterhouse cases, 16 Wall., 106.

Statutes regulating the practice of medicine are valid exercises of the police power.—Bragg v. State. 134 Ala., 165; Brooks v. State, 88 Ala., 122; Bell v. State, 104 Ala., 79; Nicholson v. State, 100 Ala., 132.

An act to establish, maintain and regulate and make efficient a dispensary, etc., and a branch thereof in the town of F., and to provide for the issuance of liquor license was held valid and not to embrace but one subject in its title.—Mitchell v. State, 143 Ala., 392.

Restrictions may be imposed on the sale of intoxicants in respect to quantity and purchasers.— Lodano v. State, 25 Ala., 64.

And it may be regulated or prohibited in particular districts.—Harrison v. Gordy, 57 Ala., 49; Harrison v. State, 91 Ala., 62; Ex parte Sikes, 102 Ala., 173.

But the importation from another State, and sale in original packages, cannot be interfered with by State.—Keith v. State, 91 Ala., 2; Rion v. State, 91 Ala., 2; Harrison v. State, 91 Ala., 62.

Distillation of spirits, except under direction of the Governor, may be prohibited.—Ingram v. State, 39 Ala., 247.

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SEC. 45. The style of the laws of this State shall be: "Be it enacted by the

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SEC. 2. The style of the laws of this State shall be: "Be it enacted by the

Sale and manufacture of oleomargarine.—Cook v. State, 110 Ala., 40.

The right to license and control the practice of medicine.—Bell v. State, 104 Ala., 79.

To regulate and prohibit markets, sale of meats.—Ex parte Bird, 84 Ala., 19.

To regulate sale of fertilizers.—Steiner v. Ray, 84 Ala., 93.

To require engineers to be examined as to color-blindness.—81 Ala., 279.

To require railroads to fence their right of way.—Parsons' case, 100 Ala., 665.

To license trades and employments.—Van Hook v. Selma, 70 Ala., 361.

Police powers embrace the protection of the lives, health and property of the citizens, the maintenance of good order, and the preservation of public morals.—100 Ala., 665; 70 Ala., 361; 97 U. S., 25.

The Legislature cannot authorize commissioners to suspend or discontinue a law or to determine what police regulations shall or shall not obtain in a county.—Mitchell v. State, 134 Ala., 392.

**Powers, Delegation of:**

For the same reason that the Legislature cannot delegate its law-making power, one Legislature cannot bind subsequent ones by enacting laws which shall be irrepealable. If it could do this, it would change the Constitution from which it derives its authority.—Cooley Const. Lim., 149; Wall v. State, 23 Ind., 150.

There are some limitations upon Legislative power which spring from the very nature of the free government, and which are not specifically prescribed by the Constitution, but it the power which is exercised is legislative in its character, then the courts can enforce only those limitations that the Constitution itself can apply.—State v. McCan, 21 Ohio St., 198; Adams v. Howe, 14 Miss., 340; s.c., 7 Am. Dec., 216.

While the Legislature can declare certain documents or acts prima facie evidence, it is not the province of the Legislature to make them final or conclusive. The law of the land requires that a party have a trial, and there can be no trial if the Legislature precludes one party by making certain matters conclusive evidence.—Little Rock R. R. Co. v. Payne, 33 Ark., 816; 34 Am. Rep., 55; Smith v. Cleveland, 17 Wis., 556; McCready v. Sexton, 29 Iowa. 356; East Kingston v. Towle, 48 N. H., 57; 2 Am. Rep., 174.

It is a maxim that the power vested in the Legislature to make laws cannot be delegated to any other department of the government; where the Constitution places the authority it must remain. Placing it in one department is a denial of the right to the other.—Cooley Const. Lim., 139; Thorne v. Cramer, 15 Barb., 112; Bradley v. Baxter, 15 Barb., 122; State v. Weir, 33 Iowa 134; (11 Am. Rep., 115.)

The Legislature cannot delegate a power to a department or agent other than that which the Constitution allows.—Clark v. Mobile, 67 Ala., 217; Fox v. McDonald, 101 Ala., 51.

It cannot delegate the taxing power to school districts.—Schultes v. Eberly, 82 Ala., 242.

It may authorize county to establish stock law districts.—Dunn v. Wilcox Co., 85 Ala., 144.

Delegation of power to municipal corporations: Power to delegate a reiteration of the common law.—Dunn v. Wilcox Co., 85 Ala., 144.

May delegate power to levy taxes and impose licenses on every species of property and all occupations except when restrained by State or Federal Constitution.—Yuille v. Mayor, 3 Ala., 137; State v. Estabrook, 6 Ala., 653; Carroll v. Mayor, 12 Ala., 173; Osborne v. Mayor, 44 Ala., 493; City Council v. Shoemaker, 51 Ala., 114; Ex parte City Council, 64 Ala., 463; Van Hook v. Selma, 70 Ala., 361; Ex parte Byrd, 84 Ala., 17.

To pass laws and ordinances having the force of laws of the Legislature.—Marion v. Chandler, 6 Ala., 899; Mayor v. Rouse, 8 Ala., 515; Mayor v. Allaire, 14 Ala., 400; Moses v. Mayor, 52 Ala., 198.

Under power to license and regulate retailing, prohibitory price cannot be charged for a license.—Ex parte Burnett, 30 Ala., 461; Craig v. Burnett, 32 Ala., 728; Miller v. Jones, 80 Ala., 89; Ex parte Cowert, 92 Ala., 94; Ex parte Mayor, 90 Ala., 516; Ex parte Sikes, 102 Ala., 173.

But under power to license, regulate and restrain, prohibitory price may be charged for license to retail.—Marion v. Chandler, 6 Ala., 899.

The power to license, if granted as a police power, cannot be used to raise revenue.—Ex parte Marshall, 64 Ala., 266; Van Hook v. Selma, 70 Ala., 361; Ex parte Byrd, 84 Ala., 17; Ex parte Sikes, 102 Ala., 173.

Holder of city license to retail is not exempted from payment of license fee to State, nor vice versa.—State v. Estabrook, 6 Ala., 653; Mayor v. Rouse, 8 Ala., 515; Greensboro v. Mullins, 13 Ala., 341; West v. Greenville, 39 Ala., 69.

Municipality in prohibition district, with power to suppress offenses against morality and decency, may prohibit the sale of whisky.—Ex parte Russellville, 95 Ala., 19.

May delegate power to license bakers and regulate the price of bread.—Mayor v. Yuille, 3 Ala., 137.

To tax a steamboat owned by a citizen although registered under the laws of the United States.—Battle v. Mobile, 9 Ala., 234.

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Legislature of Alabama," which need not be repeated, but the act shall be

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General Assembly of Alabama." Each law shall contain but one subject, which

To impose a tax on the sales of auctioneers, peddlers, etc., or license them.—Carroll v. Mayor, 12 Ala., 173.

To levy a tax for local improvements.—Stein v. Mayor, 24 Ala., 591; Gibbons v. M. & G. R. R. Co., 36 Ala., 410.

To license lawyers.—Goldthwaite v. City Council, 50 Ala., 486; Ex parte City Council, 64 Ala., 463.

To levy a specific tax on an express company.—City Council v. Shoemaker, 51 Ala., 114.

To improve streets at the expense of adjacent property.—Irwin v. Mayor, 57 Ala., 6; Mayor v. Klein, 89 Ala., 461; (overruling Mayor v. Dargan, 45 Ala., 310; Mayor v. Royal St. R. Co., 45 Ala., 322.)

To impound cattle taken damage feasant, and sell them, if not redeemed.—Dillard v. Webb, 55 Ala., 468.

To establish and regulate markets.—Ex parte Byrd, 84 Ala., 17.

To prohibit transfer agent from going into railroad station to solicit patronage.—Lindsay v. Mayor, 104 Ala., 257. See also Art XI.

**Delegation to Counties:**

Counties are not municipal corporations, but civil or political divisions of the State, and quasi legislative powers may be given them.—Askew v. Hale Co., 54 Ala., 639; Stanfill v. Dallas Co., 80 Ala., 287; McGraw v. County Comrs., 89 Ala., 407.

## COMMERCE.

State cannot interfere with interstate commerce; what is interstate commerce.—Mobile v. Leloup, 76 Ala., 401; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala., 273; McDonald v. State, 81 Ala., 279; Rion v. State, 91 Ala., 2; Nelms v. Edinburg Mfg. Co., 92 Ala., 157; Cook v. Rome Brick Co., 98 Ala., 409; Culberson v. Am. T. & B. Co., 107 Ala., 457.

Statutes to prohibit and regulate the sale of liquors do not regulate commerce.—Hinson v. Lott, 40 Ala., 131; Dorman v. State, 34 Ala., 216.

A tax on goods purchased is not a regulation of commerce. Regulating pilotage is not an interference.—Com. v. Steamboat Cuba, 28 Ala., 197.

A license tax on express or railroad companies is not an unauthorized interference.—44 Ala., 498.

The State may regulate the taking of oysters from the State.—State v. Harrub, 95 Ala., 176.

The State may prohibit pool selling.—Stripling's case, 113 Ala., 120.

The State cannot regulate common carriers as to interstate commerce.—R. R. Co. v. Dismukes, 94 Ala., 132.

It is within the power of Congress and not the Legislature to regulate interstate commerce. The State may regulate it if Congress has not. Keith's case, 91 Ala., 6; Leisey v. Hardin, 135 U. S., 100.

A privilege tax cannot be required exclusively of foreign drummers.—Robbins v. Shelby Co., 120 Ala., 489; Agee v. State, 83 Ala., 110.

The State or municipality may regulate commerce within their territory.—A. G. S. R. Co. v. Bessemer, 113 Ala., 668; Moore v. Eufaula, 97 Ala., 670.

A State cannot discriminate in favor of its own products.—Vines v. State, 67 Ala., 73; Wilton v. Mo., 95 U. S., 275.

A statute imposing a penalty upon mortgagees for failure to enter satisfaction upon mortgage record is applicable to nonresidents, and is not an interference with interstate commerce.—Dittman Co., v. Mixon, 120 Ala., 206.

An ordinance imposing a license tax upon brokers does not apply to brokers representing non-resident corporations engaged in making sales of merchandise in other States.—Stratford v. Montgomery, 110 Ala., 619.

If the Legislature cannot tax the business it cannot tax the persons engaged therein.—Stratford v. Montgomery, 110 Ala., 619.

If a broker is engaged in a general business he may be taxed.—Stratford v. Montgomery, 110 Ala., 619; State v. Agee, 83 Ala., 110; Ex parte Murray, 93 Ala., 78; Ware v. Shoe Co., 92 Ala., 145, see also Robbins' case, 120 U. S., 489.

A construction of the United States Constitution by the Supreme Court of the United States is binding upon a State court.—Stratford v. Montgomery, 110 Ala., 619.

A State may require a privilege tax of a corporation for doing business within its borders, provided it is confined to business done in the State.—City of Anniston v. So. Ry. Co., 112 Ala., 557; Moore v. Eufaula, 97 Ala., 670.

An act prohibiting the engaging in wagering contracts on matters without the State is not violative of this provision.—State v. Stripling, 113 Ala., 120.

## VESTED RIGHTS.

No man can be deprived of vested rights in property by the mere force of Legislative enactment or by any other mode than the one of transferring title. The mere expectancy of property in the future is not a vested right, nor is the right to a particular remedy a vested right, and the right to have one's controversies determined by existing rules of evidence is not a vested right.—Cooley Const. Lim., 430-511.

When a penalty has accrued, it is a vested right, but the commencement of the suit does not vest the right.—Taylor v. Rushing, 2 Stew., 160; Pope v. Lewis, 4 Ala., 487.

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divided into sections for convenience, according to substance, and the sections

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shall be clearly expressed in its title, except general appropriation bills, general

A statute imposing the payment of $200.00 on insurance company for the benefit of a medical college was held to create a vested right.—Med. Col. v. Muldon, 46 Ala., 603.

The Legislature may alter, enlarge, modify or confer a remedy for existing legal rights.—Coosa Co. v. Barclay, 30 Ala., 120.

A remedy may act retrospectively without destroying vested rights.—Bartlett v. Lang, 2 Ala., 401; Paschall v. Whitsett, 11 Ala., 472.

Statutes as to competency of witness do not affect vested rights.—Walthall v. Walthall, 42 Ala., 450; Goodlett v. Kelly, 74 Ala., 213.

The Legislature may either extend the period of the Statute of Limitations, or strike them down entirely, provided it does not destroy vested rights.—Scales v. Otts, 127 Ala., 582.

Statutes which affect the remedy only do not destroy vested rights.—Abbett v. Page, 92 Ala., 571.

Such as rights to institute claim suits.—Hardy v. Ingram, 84 Ala., 544; 83 Ala., 408, 440.

Removal from homestead.—Banks v. Speers, 97 Ala., 560.

Lien of corporations upon shares of stockholders.—101 Ala., 304.

Taxes having a retroactive operation.—81 Ala., 110.

Peremptory challenges of jury.—86 Ala., 617.

Exemptions from jury service.—Dunlap v. State, 76 Ala., 460.

Conveyances as conclusive evidence.—Doe v. Minge, 56 Ala., 121.

Estates of married women.—Maxwell v. Grace, 85 Ala., 579; Memphis Co. v. Bynum, 92 Ala., 335.

Reducing salary of Circuit Judge.—White v. State, 123 Ala., 577.

Control over public corporations.—University v. Winston, 5 Stew. & Port., 17.

Erection of toll gates and toll bridges.—Powell v. Sammons, 31 Ala., 552; Dyer v. Tuscaloosa Co., 2 Port., 296.

Liens not a vested right.—Martin v. Hewitt, 44 Ala., 418.

A right springing from contract is not protected.—M. & G. R. Co. v. Peebles, 47 Ala., 317.

Mortgages, foreclosure by judicial proceeding.—Bugbee v. Howard, 32 Ala., 713.

Prohibiting issue of execution.—Hudspeth v. Davis, 41 Ala., 389.

Forfeiting charter of corporations.—State v. Tombeckbee Bank, 2 Stew., 30.

Redemption of land sold under execution or mortgage.—Beck v. Burnett, 22 Ala., 822.

The power to regulate remedy and mode of procedure.—Ex parte Pollard, 40 Ala., 77.

Breach of contract a penal offense.—Blann v. State, 39 Ala., 353.

Creating a new cause of action for which there is no remedy.—30 Ala., 120.

Admission of parol evidence to prove consideration of contract.—41 Ala., 423.

Prohibiting transfer of contracts, choses in actions.—23 Ala., 168.

Insolvent laws discharge debtor.—32 Ala., 332.

Authorizing loan of two and three per cent funds.—36 Ala., 371.

Mode of conveying property under the control of the Legislature.—Warfield v. Reavis, 38 Ala., 518.

Exemptions from military service.—Ex parte Tate, 39 Ala., 254.

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In the early history of legislative enactments in the United States the titles of Acts were considered no part of them. They were usually affixed by the clerk of the House in which the bill was introduced or first passed. They were merely intended to indicate the clerk's understanding of the purpose or object of the bill, and not the opinion of the House. This condition led often to a chaotic mass of legislation called hodge-podge or log-rolling legislation, to prevent which most of the State Constitutions now contain provisions designed to prevent such legislation, as well as to prevent surprise or fraud upon the Legislature, by means of provisions in bills of which the title gives no intimation, and for that reason might be carelessly or unintentionally enacted, and in order that the people might know the character and purpose for which measures were introduced, that they might have the opportunity of being heard by petition or otherwise.—Cooley Const. Lim., 170-173.

A code of laws is valid if the bill by which it was adopted went through the prescribed forms.—Dew v. Cunningham, 28 Ala., 466; Hoover v. State, 59 Ala., 57; Bales v. State, 63 Ala., 30.

The valid adoption of a Code of laws reenacts all the laws included therein, although originally invalid because proper forms were not pursued.—Bales v. State, 63 Ala., 30.

Each law shall contain but one subject which shall be clearly expressed in the title, etc.—Miles v. State, 40 Ala., 39; Ex parte Pollard, 40 Ala., 77; Weaver v. Lapsley, 43 Ala., 224; Gunter v. Dale Co., 44 Ala., 639; Martin v. Hewitt, 44 Ala., 418; Ex parte S. & G. R. Co., 45 Ala., 696; Farley v. Dowe, 45 Ala., 324; Ex parte Upshaw, 45 Ala., 234; DeKalb Co. v. Smith, 47 Ala., 407; Horst v. Moses, 48 Ala., 129; Walker v. State, 49 Ala., 329; Lowndes Co. v. Hunter, 49 Ala., 507; Tallassee Mfg. Co. v. Glenn, 50 Ala., 489; State v. Price, 50 Ala., 568; Giles v. State, 52 Ala., 29; Moses v. Mayor, 52 Ala., 198; Ex parte Hickey, 52 Ala., 228; Ex parte Buckley, 53 Ala., 42; Board Rev. v. Barber, 53 Ala., 589; State v. Buckley, 54 Ala., 599; Dillard v. Webb, 55 Ala., 468; Smith v. State, 55 Ala., 1; Watson

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designated merely by figures. Each law shall contain but one subject, which

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revenue bills, and bills adopting a Code, digest, or revision of statutes; and no

v. State, 55 Ala., 158; Evans v. M. & C. R. Co., 56 Ala., 246; Dane v. McArthur, 57 Ala., 448; Rogers v. Torbut, 58 Ala., 523; Hoover v. State, 59 Ala., 57; Walker v. Griffith, 60 Ala., 361; Ex parte Moore, 62 Ala., 471; Bales v. State, 63 Ala., 30; Block v. State, 66 Ala., 493; Carson v. State, 69 Ala., 235; Stein v. Leeper, 78 Ala., 517; Abernathy v. State, 78 Ala., 411; Donnelly v. State, 78 Ala., 453; Dunbar v. Frazer, 78 Ala., 538; Tatum v. State, 82 Ala., 5; Hare v. Kennerly, 83 Ala., 608; Ramagnano v. Crook, 85 Ala., 226; Gandy v. State, 86 Ala., 20; Bolling v. LeGrand, 87 Ala., 482; Judson v. Bessemer, 87 Ala., 240; Ex parte Reynolds, 87 Ala., 138; Montgomery v. State, 88 Ala., 141; Glenn v. Lynn, 89 Ala., 608; M. & G. R. Co. v. Comrs., 97 Ala., 105; Ex parte Cowert, 92 Ala., 94; State v. Melvin, 95 Ala., 176; Barnhill v. Teague, 96 Ala., 207; State v. Hartford Ins. Co., 99 Ala., 221; Dean v. State, 100 Ala., 102; Fox v. McDonald, 101 Ala., 51; Yerby v. Cochrane, 101 Ala., 541; Burton v. State, 107 Ala., 108; Motgomery v. State, 107 Ala., 372; State v. Rogers, 107 Ala., 444; City Council v. National B. & L. Assn., 108 Ala., 336; Rice v. Westcott, 108 Ala., 353; Harper v. State 109 Ala., 28, 66.

Preamble of statutes.—White v. Levy, 91 Ala., 175.

No law shall be revived, amended, extended, etc.—Rogers v. Torbut, 58 Ala., 523; Clarke v. Mobile, 67 Ala., 217; Stewart v. County Comrs., 82 Ala., 209; State v. Warford, 84 Ala., 15; Todd v. State, 85 Ala., 339; Bolling v. LeGrand, 87 Ala., 482; Bay Shell Road Co. v. O'Donnell, 87 Ala., 376; Ex parte Pierce, 87 Ala., 110; Maxwell v. State, 89 Ala., 150; Ex parte Cowert, 92 Ala., 94; Barnhill v. Teague, 96 Ala., 207; Childs v. State, 97 Ala., 49; Stewart v. State, 100 Ala., 1; Miller v. Berry, 101 Ala., 531; Burton v. State, 107 Ala., 108; Rice v. Wescott, 108 Ala., 353; Harper v. State, 109 Ala., 28, 66.

Sufficient to set out law as amended.—Wilkerson v. Ketler, 59 Ala., 306; State v. Warford, 84 Ala., 15; Dunbar v. Frazer, 78 Ala., 538.

Only applies to law which is strictly amendatory or revisory.—Ex parte Pollard, 40 Ala., 77.

If the several clauses are perfectly distinct and separable, and are not interdependent, one part of a law may stand while the other is expunged.—M. & O. R. Co. v. State, 29 Ala., 573; Lowndes Co. v. Hunter, 49 Ala., 507; Rogers v. Torbut, 58 Ala., 523; Ex parte Moore, 62 Ala., 471; Powell v. State, 69 Ala., 10; Stein v. Leeper, 78 Ala., 517; Montgomery v. State, 88 Ala., 141; Barnhill v. Teague, 96 Ala., 207; Woolf v. Taylor, 98 Ala., 254; State v. Hartford Ins Co., 99 Ala., 221; Yerby v. Cochrane, 101 Ala., 541; Harper v. State, 109 Ala., 28, 66; Shehane v. Bailey, 110 Ala., 308.

Where a special act to validate the organization of a corporation recognizes it as a valid corporation, it makes no difference if one section is not included in title of act so far as the validity of the other portions are concerned.—Sanche v. Webb, 110 Ala., 214.

The mischief designed to be remedied was the enactment of amendatory statutes in terms so blind that legislators were deceived and the public not apprised of the change to be made.—Ex parte Thomas, 113 Ala., 1.

Subject may be expressed in a very general way.—Ex parte Pollard, 40 Ala., 98; Ex parte Thomas, 113 Ala., 1.

Constitution relates to cases only where act is strictly amendatory or revisory.—Ex parte Thomas, 113 Ala., 1.

If the law is in itself original and complete in form, it is without the spirit of the Constitution.—Ex parte Thomas, 113 Ala., 1; Falconer v. Robinson, 46 Ala., 340; Gandy v. State, 86 Ala., 20; State v. Rogers, 107 Ala., 444; Mont v. Birdsong, 126 Ala., 632.

Statutes amendatory of others by implication are not within its influence.—Ex parte Thomas, 113 Ala., 1.

The subject of a bill may be as broad as the Legislature may choose to make it, if it comprehends everything in the bill.—Bell v. State, 115 Ala., 87; Ballentyne v. Wickersham, 75 Ala., 533.

If it is contended that an amendatory act for the drawing of juries is void, and the original act is valid, if it is not shown under which act the jury is drawn, it will be presumed it was drawn under the valid act.—Newell v. State, 115 Ala., 54.

Whatever is referable and cognate to the general subject, or whatever is necessary to a complete enactment in regard to it, or results as a complement to the general expression or necessary to the end in view, is authorized.—Ex parte Birmingham, 116 Ala., 454.

The exegencies of legislation require that this provision should not be so strictly construed as to cripple the Legislature by prohibiting insertion of matters not included in title, but are proper for accomplishment of object expressed.—Ex parte Birmingham, 116 Ala., 186.

If the questioned parts be not so related to the subject expressed as to appear to follow as a natural and legitimate complement, then they cannot stand.—Ex parte Birmingham, 116 Ala., 186; Ballentyne v. Wickersham, 75 Ala., 533.

If the section as amended is set out in full, it is not necessary to set out original act.—Montgomery v. State, 107 Ala., 372; Ex parte Pollard, 40 Ala., 77; Bates v. State, 118 Ala., 102.

Provision is directed against practice of amending or revising laws by addition or al-

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shall be clearly expressed in its title, except general appropriation bills, gen-

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law shall be revived, amended, or the provisions thereof extended or conferred,

teration, which, without the original, are unintelligible.—Bates v. State, 118 Ala., 102.

This provision must receive a reasonable construction so as to give it effect.—Bates v. State, 118 Ala., 102; State v. Rogers, 107 Ala., 444.

If a law is complete within itself and original in form, it does not fall within spirit of Constitution.—Bates v. State, 118 Ala., 102; Ex parte Pollard, 40 Ala., 77; Tuscaloosa v. Olmstead, 41 Ala., 1; Gandy v. State, 86 Ala., 20; State v. Rogers, 107 Ala., 444.

If subject is expressed in general terms, everything necessary to make complete enactment, or which results as a complement of general expression, is included.—State v. Harrub, 95 Ala., 176; Ex parte Birmingham, 116 Ala., 186; Ballentyne v. Wickersham, 75 Ala., 536; State v. Sayre, 118 Ala., 1.

The title may be very general and need not specify every clause of the statute; it is sufficient if they are all referable and cognate to subject expressed.—Ballentyne v. Wickersham, 75 Ala., 536; State v. Harrub, 95 Ala., 176; Ex parte Birmingham, 116 Ala., 186; State v. Sayre, 118 Ala., 1.

Subject must embrace every part of law. The test is, is there anything in the bill which cannot be referred to title.—State v. Sayre, 118 Ala., 1; Ex parte Pollard, 40 Ala., 77.

But this conclusion should never be reached except by liberality of construction and freedom from vice or verbal criticism.—State v. Sayre, 118 Ala., 1; Ex parte Pollard, 40 Ala., 77.

Constitution exacts an announcement in title of subject, but does not dictate any degree of particularity.—State v. Sayre, 118 Ala., 1; Ex parte Pollard, 40 Ala., 77.

The Legislature is not subject to judicial control, as to how subject must be expressed in title. If it is expressed the Constitution is satisfied.—State v. Sayre, 118 Ala., 1; Ex parte Pollard, 40 Ala., 77.

Object is to prevent deception. Generality and comprehensiveness is no objection.—State v. Sayre, 118 Ala., 1; Ex parte Pollard, 40 Ala., 77.

As long as the generality of the title is not made a cover to legislation incongruous in itself, and which by no fair intendment can be considered as having a necessary or proper connection, it is sufficient.—State v. Street, 117 Ala., 203.

The limitation must be so construed and applied as to avoid and suppress the mischief which it is directed against, but it must not be so strict as to embarrass legislation.—State v. Street, 117 Ala., 203.

However broad and comprehensive subject may be, if it includes all provisions of act, it is valid.—State v. Crook, 126 Ala., 600.

If anything can be found in the bill which cannot be referred to the subject in the title, this is violative of provision.—Ib., Ex parte Pollard, 40 Ala., 99; A. G. S. R. Co. v. Reed, 124 Ala., 252.

An act of the Legislature, original in form, intelligible and complete in itself, is not within this provision.—Cobb v. Vary, 120 Ala., 263; State v. Rogers, 107 Ala., 454.

Constitution is satisfied if act has but one general subject fairly indicated in title.—Lindsay v. U. S. Assn., 120 Ala., 156; Ex parte Pollard, 40 Ala., 98; Ballentyne's case, 75 Ala., 533; State v. Rogers, 107 Ala., 444.

When there is fair expression in title of the subject, all matters reasonably connected with it and all proper agencies, instrumentalities, or measures which may facilitate its accomplishment are proper and germane or cognate to title.—Lindsay v. U. S. Assn., 120 Ala., 156.

Much must be left to legislative discretion, with which there cannot be judicial interference. If the title does not fairly and reasonably express subject of act—if it be misleading or deceptive, the Constitution compels its condemnation.—Lindsay v. U. S. Assn., 120 Ala., 156.

When two subjects are expressed in the title and the body embraces each, the whole act must be treated as void.—Builders Co. v. Lucas & Co., 119 Ala., 202; Ballentyne v. Wickersham, 75 Ala., 533.

Title must be such as to support or give a clue to the subject dealt with in the act, and unless it comes up to this standard it is not sufficient.—Lindsay v. U. S. Assn., 120 Ala., 156.

A statute is not offensive to this provision because the title contains two subjects, if only one is contained in the body of the act.—Hawkins v. Roberts, 122 Ala., 130; Robinson v. Moseley, 93 Ala., 70.

An amendatory act which refers to the title of the statute amended and sets forth in full the statute as it is to be read as amended, though it does not recite the act as it originally stood, is sufficient.—Lewis v. State, 123 Ala., 84.

The inclusion of matters in statute not mentioned in title, if cognate to subject expressed in title, does not render such statute unconstitutional.—Lewis v. State, 123 Ala., 84; Ballentyne v. Wickersham, 75 Ala., 533; White v. Burgin, 113 Ala., 170.

The provision is mandatory, but the courts should be certain that the statute is violative of the provision before adjudging it unconstitutional, but when it is relieved of doubt there should be no hesitancy on the part of the judiciary in setting it aside.—City of Mobile v. L. & N. R. Co., 124 Ala., 132.

When title expresses one general subject, however broad and comprehensive, whether the act includes provisions which can by no fair intendment be considered as having connection or relation to subject expressed, is the test.—A. G. S. R. Co. v. Reed, 124 Ala., 253.

eral revenue bills, and bills adopting a by reference to its title only; but so

The clause is mandatory. Its requirements are not to be exactingly enforced, or in such manner as to cripple legislation. Title to bill may be general and need not express every clause in statute. Sufficient if they are referable and cognate to the subject expressed.—Randolph v. Supply Co., 106 Ala., 501; Ballentyne v. Wickersham, 75 Ala., 533; Wolf v. Taylor, 98 Ala., 254, but see 124 Ala., 97; Bates v. State, 118 Ala., 102.

When title expresses but one general subject, and all provisions are allied to subject expressed, or germane or cognate to it, the provision is satisfied.—State v. Street, 117 Ala., 208; A. G. S. R. Co. v. Reed, 124 Ala., 253; State ex rel. Porter v. Crook, 126 Ala., 600; Randolph v. Supply Co., 106 Ala., 501; Ballentyne v. Wickersham, 75 Ala., 533; Wolf v. Taylor, 98 Ala., 254, but see Benners v. State, 124 Ala., 97.

The whole act may be examined to determine if provision has been violated.—State ex rel. Porter v. Crook, etc., 126 Ala., 600.

But an act refering to an unconstitutional act as amendatory to such act, if the title is fully expressed in the second act, it is valid.—Street v. Hooten, 131 Ala., 492.

In adopting Code, the Legislature thereby validates any provision therein, which had not prior thereto been enacted in accordance with Constitution, but does not affect an amendment inserted by the commissioner after adoption.—Bluthenthal v. Trager & Co., et al., 131 Ala., 639.

It is only when there is a clear violation of Constitution that the courts can pronounce statute invalid.—Ala. G. S. R. Co. v. Reed, 124 Ala., 252.

It is not essential that title disclose subject with accuracy.—128 Ala., 139. Sufficient if subject is single, and title expresses it so as the enactment is embraced in, or referable to that subject.—Ib.; Boyd v. State, 53 Ala., 606; Adler v. State, 55 Ala., 21; 128 Ala., 345; 75 Ala., 536; 79 Ala., 1; 70 Ala., 145.

Object is to prevent deception by including in bill matter incongruous with title. To prevent the misleading of General Assembly and public by introducing matters foreign to each other.—Ex parte Pollard, 40 Ala., 77; Key v. Jones, 52 Ala., 238; 128 Ala., 139, 335.

It is sufficient if the matters regulated or forbidden in the body of the act fall within the general purpose expressed in the title and relate to it.—Benners v. State, 124 Ala., 97; State v. Stripling, 113 Ala., 120; Montgomery Assn. v. Robinson, 69 Ala., 413; A. G. S. R. Co. v. Reed, 124 Ala., 253; State v. Street, 117 Ala., 208; 75 Ala., 537; 113 Ala., 120.

The intention of provision is that title to act should inform the Legislature and the public of subject upon which former are to legislate.—Ala. G. S. R. Co. v. Reed, 124 Ala., 252; Randolph v. Painters Co., 106 Ala., 501.

Where an act seeks to effectuate the rights conferred by referring to certain sections of the Code as furnishing means necessary for their enforcement, it is not void under this Art.—Cobb v. Vary, 120 Ala., 263.

If the title contains two subjects and the body of the act only one, that which is expressed in the title but not contained in the law, may be rejected as surplusage.—State v. Crook, 126 Ala., 615; Judson v. Bessemer, 87 Ala., 242; Gandy v. State, 86 Ala., 20; Thomas v. State, 124 Ala., 48.

The subject-matter embraced in the body of the act must be expressed or implied in the title.—Bradley v. State, 99 Ala., 177; State v. Davis, 130 Ala., 153.

When there is a fair expression of the subject in the title, all matters reasonably connected with it, and all proper agencies or instrumentalities or measures which may or will facilitate its accomplishment, are proper to be incorporated in the act, and they are usually said to be cognate and germane to the title.—Lindsay's case, 120 Ala., 156; Bell v. State, 115 Ala., 87; Jackson v. State, 136 Ala., 96.

An act "to protect human life" is sufficient to cover provision preventing pointing firearms at another.—Davenport v. State, 112 Ala., 49.

An act to amend an act to create a board of education and prescribe its powers, which provides for the levy of a tax for public education is violative of the Constitution.—State v. So. Ry. Co., 115 Ala., 250.

A bill entitled "to provide a charter for a municipality," includes everything necessary to a complete municipal charter.—Lockhart v. Troy, 48 Ala., 579; Bell v. State, 115 Ala., 87.

An act authorizing the Probate Court to establish a stock law district and to regulate the same is valid.—Edmonson v. Ledbetter, 114 Ala., 477.

The caption of an act " to regulate management of State convicts" does not embrace provision for payment of costs of conviction.—State v. Burgin, 113 Ala., 170; Ex parte Gayles, 108 Ala., 514.

The subject, "for the better suppression of gambling" includes the selling of pool or tickets, making or taking wagers on transactions where a thing of value may be won or lost on a contest not in the State.—State v. Stripling, 113 Ala., 120.

An act authorizing a judge to direct when a grand jury shall be drawn, includes a proviso for the drawing of a jury where none has been drawn or been quashed.—Daughdrill v. State, 113 Ala., 7.

An act adopting a code of laws not within letter or spirit of provision.—Ex parte Thomas, 113 Ala., 1.

An act providing that railroad companies may condemn rights of way in the same manner as is now provided by a certain provision of Code, is not violative of Constitution.—State

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code, digest, or revision of statutes; and

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much thereof as is revived, amended, ex-

v. Rogers, 107 Ala., 444; Birmingham Ry. Co. v. Elyton Co., 114 Ala., 70.

An act "to establish a new charter" does not expressly cover or suggest a provision that a person who has been arraigned before the Mayor must be proceeded against before the Mayor, as ex-officio Justice of the Peace.—Bell v. State, 115 Ala., 87.

A change in the mode of punishment from imprisonment in the penitentiary to hard labor for the county, is not included in the title "an act to regulate the management of the State and county convicts."—Brown v. State, 115 Ala., 74; Ex parte Gayles, 108 Ala., 514.

An act to establish a convict system for the State and to provide for the government, discipline and maintenance of convicts, cannot include a provision fixing the punishment.—Brown v. State, 115 Ala., 74.

An act to authorize the Governor, with the consent of the Senate, to appoint a judge, comprehends a clause providing for the appointment by Governor in case of vacancy.—State v. Sayre, 118 Ala., 1.

An act entitled "to regulate the fine and forfeiture fund," which provides for an appropriation from the general funds of the county is violative of this provision.—Sanders v. County Commissioners, 117 Ala., 543.

An act entitled "an act to provide for sale of liquors and drinks" which deals with exchanging and giving away, is violative of Constitution.—Yahn v. Merritt, 117 Ala., 485; Morgan v. State, 81 Ala., 72; Miller v. Jones, 80 Ala., 89.

An act providing for the improvement of roads and bridges contains but one subject.—State v. Street, 117 Ala., 203.

This provision is not an exception to cardinal rule that it is only a clear violation of constitutional rule which will justify overruling legislative will.—State v. Street, 117 Ala., 203.

An act to define general assignments and prevent fraudulent disposition of property violates this provision.—Builders Co. v. Lucas Co., 119 Ala., 203.

This clause is intended to prevent "hodgepodge or logrolling legislation." 2. To prevent surprise or fraud. 3. To apprise the people of legislative proceedings.—Lindsay v. U. S. Assn., 120 Ala., 156.

Title providing for working convicts on public roads covers provision for working persons sentenced to hard work for county, and persons sentenced to penitentiary for five years or less.—Williams v. Board of Revenue, 123 Ala., 432.

An act providing for the construction and building of roads is germane to title for working and keeping roads in repair.—State v. Street, 117 Ala., 203; Williams v. Board of Revenue, 123 Ala., 432.

An act providing that a county site be determined by the vote of the qualified electors, does not mean electors qualified under Constitution and statutes, and a provision may be inserted in body of act prescribing who are qualified electors.—State ex rel. Porter v. Crook, 126 Ala., 600.

"An act to establish a dispensary and a branch thereof, and providing for issuance of liquor license until the act goes into effect" is valid.—Mitchell et al. v. State, ex rel, Florence Dispensary, 134 Ala., 392.

"An act to establish a text-book board for the public schools, and to define its powers and duties," providing for the appointment of board and for selection of books, for compensation to board, and that it shall not come out of school fund, and that county shall pay the same, is not violative of Constitution.—State ex rel. Williams v. Griffin, 132 Ala., 47.

An act to extend the provisions of a prior act without making other reference than to "the stock law of Clay County," is void.—Street v. Hooten, 131 Ala., 492; Stewart v. Commrs., 82 Ala., 209.

An act entitled "to prohibit sale of intoxicating liquors," is invalid as to prohibiting disposing of liquors otherwise than sale, and in prohibiting sale of commodities not intoxicating.—State v. Davis, 130 Ala., 148.

If part of statute which is valid is complete within itself, it may be enforced.—Ib., Bradley's case, 99 Ala., 177.

An act entitled "to prohibit sale," void as to provision for refunding license paid.—Ib.

An act granting riparian rights in river, while the body grants a fee is valid, the fee being included in riparian rights.—Mobile Trans. Co. v. Mobile, 128 Ala., 335.

Object of provision is to prevent surprise and fraud.—Ib.

It should not be construed so as to defeat legislation not within evil aimed at.—Ib.

Act must be upheld if subject-matter be comprehended in title.—Ib.; Adler v. State, 55 Ala., 21; Ballentyne v. Wickersham, 75 Ala., 536; Quartlebaum v. State, 79 Ala., 1; Edwards v Williams, 70 Ala., 145.

An act providing for the levy of a tax for paving streets, and providing that it be collected as other city taxes under a different statute, and making reference to that statute, is valid.—126 Ala., 632.

Where the title of an act was "to amend an act to regulate the drawing and empaneling of juries," being purely amendatory, should set out all the sections of the original act sought to be amended.—Bates v. State, 118 Ala., 102.

A statute authorizing the Probate Court to establish a stock law district is not in violation of this provision of the Constitution.—Edmondson v. Ledbetter, 114 Ala., 477.

A statute, the title of which is "to regulate the management of State and county convicts," will not authorize a provision regulating the costs and the taxation thereof in criminal cases.

no law shall be revived, amended or the tended or conferred, shall be re-enacted

—Brown v. State, 115 Ala., 74; Brickell, C. J., dissenting.

Where the title of an act was "to establish a new charter for the City of Huntsville," it would not authorize a provision regulating the prosecution of criminal cases before Justices of the Peace.—Bell v. State, 115 Ala., 87.

Where the title of an act was "an act to amend sections 8 and 10 of an act to create a board of education, and prescribe the powers of the same," will not authorize a provision for the levy of a tax of 20 cents on $100.00 worth of property by said city.—State v. So. Ry. Co., 115 Ala., 250.

A statute entitled an act for the improvement of roads and bridges in Marshall County pertains to but one general subject, and is not in violation of this provision of the Constitution.—State v. Street, 117 Ala., 203.

Where the title of an act was "an act to provide for and regulate the sale of intoxicating drinks," it will not authorize a provision to prohibit the barter or exchange or otherwise disposing of such drinks.—Yahn v. Merritt, 117 Ala., 485; Williams v. State, 91 Ala. 14; Morgan v. State, 81 Ala., 72; Miller v. Jones, 80 Ala., 89.

Where the title of an act was "to regulate the fine and forfeiture fund and to provide for payment of claims against the same," held not to authorize an appropriation from the general fund of the county to the fine and forfeiture fund.—Sanders v. Com. of Elmore Co., 117 Ala., 543; Pierce v. Co. Com., 117 Ala., 569.

A statute, entitled an act to extend to the fire companies of Montgomery the benefits of a former act to raise a fund for the benefit of the fire companies of Mobile, is not in violation of the Constitution as to revising or amending laws; it belongs to that class of statutes known as "Reference Statutes."—Phœnix Co. v. Fire Dep't., 117 Ala., 631.

Where the title of an act was to authorize the Governor with the advice and consent of the Senate, to appoint a judge of the City Court, would authorize a provision to fill vacancies in such office.—Winter v. Sayre, 118 Ala., 1.

Where the title of an act was "to legalize the business of building and loan associations in this State it did not authorize a provision to legalize past transactions had with building and loan associations.—Lindsay v. U. S. Co., 120 Ala., 156.

Where the title of an act was "to dispose of lands sold for taxes, if not redeemed, etc.," was held to be an original act in form, and not a law to revise or amend other laws, and was, therefore, valid.—Cobb v. Vary, 120 Ala., 263.

An act entitled "an act to incorporate a town," will not authorize a provision to issue bonds for the purpose of building a Court House for the county.—Thompson v. Luverne, 125 Ala., 366; S. C., 128 Ala., 567.

A statute to provide for the permanent location of the county site of Calhoun County was held to authorize a provision for an election to determine the location.—State v. Crook, 126 Ala., 600. McClellan, C. J., and Haralson, J., dissenting.

An act "to provide the manner of selecting police force for a city, and to provide efficient management therefor," may change the mode of electing or appointing police officers under the Constitution of 1875.—State v. McCary, 128 Ala., 139.

An act granting to Mobile riparian rights of the river front will authorize a grant to the city of the fee.—Mobile Co. v. City of Mobile, 128 Ala., 335.

An act to prohibit the sale of spirituous, vinous or malt liquors will not authorize a provision to prevent giving away, or otherwise disposing of such liquors.—State v. Davis, 130 Ala., 148.

A statute to prohibit the sale of intoxicating liquors will not authorize a provision for refunding the amount of license paid for the current year.—State v. Davis, 130 Ala., 148.

An act to establish, maintain, regulate and make effective a dispensary, etc., and a branch thereof, in the town of F., and to provide for the issuance of liquor license, was held not to embrace but one subject in its title.—Mitchell v. State, 134 Ala., 392.

A statute to establish an inferior court of Birmingham, and to define its powers, was held to authorize a provision for confession of judgments, for payment of fines and costs by the accused, and authorized provisions to sentence defendants to hard labor to pay fine and costs.—Ex parte Mayor and Aldermen of Birmingham, 116 Ala., 186.

An act, the title of which is "to further define general assignments and to prevent fraudulent disposition of property," was held to express two subjects in the title, and as both are embraced in the body of the act, it is void.—Builder's Co. v. Lucas Co., 119 Ala., 202.

An act "to ratify and confirm the levy of taxes by the Commissioner's Court of T. County, for the purpose of building bridges, and of paying the interest on bridge bonds and other bonded indebtedness, and to authorize the collection of special taxes," was held to contain two subjects, and is therefore void.—Birmingham Min. Co. v. Tuscaloosa Co., 137 Ala., 260.

An act to further define the powers and duties of the Recorders of M. City, an Alderman of said city acting as Recorder, sufficiently expresses the title.—Jackson v. State, 136 Ala., 96.

An act to provide for the payment of witness' fees attending court in the given county

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provisions thereof extended or conferred, by reference to its title only; but so much thereof as is revived, amended, extended, or conferred, shall be re-enacted and published at length.

SEC. 46. Senators and Representatives shall be elected by the qualified electors on the first Tuesday after the first Monday in November unless the Legislature shall change the time of holding elections, and in every fourth year thereafter. The terms of office of the Senators and Representatives shall commence on the day after the general election at which they are elected, and expire on the day after the general election held in the fourth year after their election, except as otherwise provided in this Constitution. At the general election in the year nineteen hundred and two all the Representatives, together with the Senators for the even-numbered districts and for the Thirty-fifth district, shall be elected. The terms of those Senators who represent the odd-numbered districts under the law in force prior to the ratification of this Constitution, are hereby extended until the day after the general election in the year nineteen hundred and six; and until the expiration of his terms as hereinbefore extended, each such Senator shall represent the district established by this Constitution, bearing the number corresponding with that for which he was elected. In the year nineteen hundred and six, and in every fourth year thereafter, all the Senators and Representatives shall be elected. Whenever a vacancy shall occur in either House, the Governor shall issue a writ of election to fill such vacancy for the remainder of the term.

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and published at length.

SEC. 3. Senators and Representatives shall be elected by the qualified electors, on the first Monday in August, eighteen hundred and seventy-six; and one-half of the Senators and all the Representatives shall be elected every two years thereafter, unless the General Assembly shall change the time of holding elections. The terms of office of the Senators shall be four years, and that of the Representatives two years, commencing on the day after the general election, except as otherwise provided in this Constitution.

SEC. 9. At the general election in the year eighteen hundred and seventy-six, Senators shall be elected in the even-numbered districts to serve for two years, and in the odd-numbered districts to serve for four years, so that thereafter one-half the Senators may be chosen biennially. Members of the House of Representatives shall be elected at the general election every second year. The time of service of Senators and Representatives shall begin on the day after their election, except the terms of those elected in the year eighteen hundred and seventy-six, which shall not begin until the term of the present members shall have expired. Whenever a vacancy shall occur in either House, the Governor for the time being shall issue a writ of election to fill such vacancy for the remainder of the term.

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will support a provision fixing the fees to be paid the witnesses.—Ellis v. Miller, 136 Ala., 185.

A statute to authorize Commissioners to set apart an appropriate fund to pay witnesses' certificates, and to regulate the payment of such claims, held not to express two subjects. —Ellis v. Miller, 136 Ala., 185.

Where the title of an act was "to establish a new charter for the City of Montgomery" it is comprehensive enough to embrace every power and right that may be exercised or enjoyed by the municipality.—City of Mont. v. Birdsong, 126 Ala., 632; State v. Rodgers, 107 Ala., 444; Cobb v. Vary, 120 Ala., 263.

The title of an act, "to authorize municipal and other sub-divisions of the State to buy and sell spirituous, vinous or malt liquors and to further regulate, and prohibit the sale of such liquors," does not provide for but one subject and is not in violation of the Constitution.—Sheppard v. Dowling, 127 Ala., 1.

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SEC. 47. Senators shall be at least twenty-five years of age, and Representatives twenty-one years of age at the time of their election. They shall have been citizens and residents of this State for three years and residents of their respective counties or districts for one year next before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and they shall reside in their respective counties or districts during their terms of office.

SEC. 48. The Legislature shall meet quadrennially at the Capitol, in the Senate chamber, and in the Hall of the House of Representatives, on the second Tuesday in January next succeeding their election, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under the Constitution, nor longer than fifty days at any subsequent session. If at any time it should from any cause become impossible or dangerous for the Legislature to meet or remain at the Capitol or for the Senate to meet or remain in the Senate chamber, or for the Representatives to meet or remain in the Hall of the House of Representatives, the Governor may convene the Legislature, or remove it, after it has convened, to some other place, or may designate some other place for the sitting of the respective Houses, or either of them, as necessity may require.

SEC. 49. The pay of the members of the Legislature shall be four dollars per day, and ten cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled.

SEC. 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the sev-

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SEC. 4. Senators shall be at least twenty-seven years of age, and Representatives twenty-one years of age; they shall have been citizens and inhabitants of this State for three years, and inhabitants of their respective counties or districts one year next before their election, if such county or district shall have been so long established; but if not, then of the county or district from which the same shall have been taken; and they shall reside in their respective counties or districts during their terms of service.

SEC. 5. The General Assembly shall meet biennially, at the Capitol, in the Senate chamber and in the hall of the House of Representatives (except in cases of destruction of the Capitol, or epidemics, when the Governor may convene them at such place in the State as he may deem best) on the day specified in this Constitution, or on such other day as may be prescribed by law; and shall not remain in session longer than sixty days at the first session held under this Constitution, nor longer than fifty days at any subsequent session.

SEC. 6. The pay of the members of the General Assembly shall be four dollars per day, and ten cents per mile in going to and returning from the seat of government, to be computed by the nearest usual route traveled.

SEC. 7. The General Assembly shall consist of not more than thirty-three Senators, and not more than one hundred members of the House of Representatives; to be apportioned among the sev-

[Art. IV., Sec. 5 of 1875.]—
Legislature sits fifty working days, excluding Sundays and days on which, by concurrent resolution, the two Houses do not sit.—Moog v. Randolph, 77 Ala., 597; Sayre v. Pollard, 77 Ala., 608; Ex parte Cowert, 92 Ala., 94.

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eral districts and counties, as prescribed in this Constitution; provided that in addition to the above number of Representatives, each new county hereafter created shall be entitled to one Representative.

SEC. 51. The Senate, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members president *pro tem.* thereof, to preside over its deliberations in the absence of the Lieutenant Governor; and the House of Representatives, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members as Speaker; and the President of the Senate and the Speaker of the House of Representatives shall hold their offices respectively, until their successors are elected and qualified. In case of the temporary disability of either of said presiding officers, the House to which he belongs may elect one of its members to preside over that House and to perform all the duties of such officer during the continuance of his disability; and such temporary officer, while performing duty as such, shall receive the same compensation to which the permanent officer is entitled by law, and no other. Each House shall choose its own officers and shall judge of the election, returns and qualifications of its members.

SEC. 52. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day and compel the attendance of absent members, in such manner and under such penalties as each House may provide.

SEC. 53. Each House shall have power to determine the rules of its proceedings and to punish its members and other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its processes; to protect its

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eral districts and counties as prescribed in this Constitution.

SEC. 8. The Senate, at the beginning of each regular session, and at such other times as may be necessary, shall elect one of its members President thereof; and the House of Representatives, at the beginning of each regular session, shall elect one of its members as Speaker; and the President of the Senate and the Speaker of the House of Representatives shall hold their offices respectively until their successors are elected and qualified. Each House shall choose its own officers, and shall judge of the election, returns and qualifications of its members.

SEC. 10. A majority of each House shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may compel the attendance of absent members, in such manner, and under such penalties, as each House may provide.

SEC. 11. Each House shall have power to determine the rules of its proceedings, and to punish its members, or other persons, for contempt or disorderly behavior in its presence; to enforce obedience to its process; to protect its mem-

[SEC. 51.]—

The House of Representatives has authority to elect a Speaker pro tempore, when from any cause the Speaker is unable to discharge his duties.—Robertson v. State, 130 Ala., 164.

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members against violence, or offers of bribes or corrupt solicitation; and with the concurrence of two-thirds of the House, to expel a member, but not a second time for the same offense; and the two Houses shall have all the powers necessary for the Legislature of a free State.

SEC. 54. A member of the Legislature, expelled for corruption, shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

SEC. 55. Each House shall keep a journal of its proceedings and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either House on any question shall, at the request of one-tenth of the members present, be entered on the Journal. Any member of either House shall have liberty to dissent from or protest against any act or resolution which he may think injurious to the public, or to an individual, and have the reason for his dissent entered on the Journal.

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bers against violence, or offers of bribes or corrupt solicitation; and, with the concurrence of two-thirds of either House, to expel a member, but not a second time for the same cause; and shall have all the powers necessary for the Legislature of a free State.

SEC. 12. A member of either House expelled for corruption shall not thereafter be eligible to either House, and punishment for contempt or disorderly behavior shall not bar an indictment for the same offense.

SEC. 13. Each House shall keep a Journal of its proceedings, and cause the same to be published immediately after its adjournment, excepting such parts as, in its judgment, may require secrecy; and the yeas and nays of the members of either House on any question shall, at the desire of one-tenth of the members present, be entered on the Journals. Any member of either House shall have liberty to dissent from, or protest against, any act or resolution which he may think injurious to the public or an individual, and have the reasons for his dissent entered on the Journals.

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[SEC. 55.]—

Journal is a public record of which the courts will take judicial notice.—Jones v. Hutchinson, 43 Ala., 721; Henderson v. State, 94 Ala., 95.

When must show affirmatively that the yeas and nays were taken, no other evidence received.—State v Buckley, 54 Ala., 599; Walker v. Griffith, 60 Ala., 361.

Except where the Constitution requires that a matter shall appear on the Journal, its performance is presumed, unless the contrary affirmatively appears.—Harrison v. Gordy, 57 Ala., 49; Perry Co. v. S. M. & M. R. Co., 58 Ala., 546; Clarke v. Jack, 60 Ala., 271; Hall v. State, 82 Ala., 562; Hare v. Kennerly, 83 Ala., 608.

Notice of a local law will be presumed if the Journal does not show the contrary. The Constitution of 1901 changes this as to some Legislation.—Harrison v. Gordy, 57 Ala., 49; Clarke v. Jack, 60 Ala., 271.

When the Journals are silent on a matter on which it is proper for them to speak it will not be presumed that either House has disregarded a constitutional requirement, except in those cases where the Journals are expressly required to show the action taken.—Walker's case, 60 Ala., 361; Ex parte Howard Harrison Co., 119 Ala., 484.

The Clerk of the House has no power to alter or change the Journal of the House after it has been deposited with the Secretary of State.—Montgomery Beer Works v. Gaston, 126 Ala., 425.

If the Journal fails to show affirmatively that a statute has been passed in accordance with Constitution, the statute is invalid.—Montgomery Beer Works v. Gaston, 126 Ala., 425; Moody v. State, 48 Ala., 115; Moog v. Randolph, 77 Ala., 599; Jones v. Hutchinson, 43 Ala., 721.

In determining whether a bill, enrolled, signed by the presiding officers of the two Houses and approved by the Governor has been regularly enacted resort can be had only to bill and Journals.—Ex parte Howard Co., 119 Ala., 484; authorities cited: Montgomery Beer Works v. Gaston, 126 Ala., 425; Robertson v. State, 130 Ala., 164.

The bound volume of the proceedings of the House, as entered therein and signed by the Speaker and attested by the clerk and filed in the office of the Secretary of State, constitutes

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SEC. 56. Members of the Legislature shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House shall not be questioned in any other place.

SEC. 57. The doors of each House shall be opened except on such occasions as, in the opinion of the House, may require secrecy, but no person shall be admitted to the floor of either House while the same is in session, except members of the Legislature, the officers and employes of the two Houses, the Governor and his secretary, representatives of the press, and other persons to whom either House, by unanimous vote, may extend the privileges of its floor.

SEC. 58. Neither House shall, without consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting, except as otherwise provided in this Constitution.

SEC. 59. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such offices as

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SEC. 14. Members of the General Assembly shall, in all cases, except treason, felony, violation of their oath of office, and breach of the peace, be privileged from arrest during their attendance at the session of their respective Houses, and in going to and returning from the same; and for any speech or debate in either House, they shall not be questioned in any other place.

SEC. 15. The doors of each House shall be open, except on such occasions as, in the opinion of the House, may require secrecy.

SEC. 16. Neither House shall, without the consent of the other, adjourn for more than three days, nor to any other place than that in which they may be sitting.

SEC. 17. No Senator or Representative shall, during the term for which he shall have been elected, be appointed to any civil office of profit under this State, which shall have been created, or the emoluments of which shall have been increased during such term, except such

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the Journal, and not the memoranda of the clerk.— Montgomery Beer Works v. Gaston, Judge, etc., 126 Ala., 425.

The bundle of papers, notes and memorandum kept by the Clerk of the House of Representatives may be the matter from which the Journals is made up, but it is not the Journal itself.— Montgomery Co. v. Gaston, 126 Ala., 425.

The Journal made up, signed and filed in the office of the Secretary of State is the final evidence of the proceedings of the respective Houses.—Mont. Co. v. Gaston, 126 Ala., 425.

The Journal cannot be interpolated or corrected by the Clerk or Secretary of State after it has been signed and filed in the office.— Mont. Co. v. Gaston, 126 Ala., 425.

Unless the Constitution requires the Journals to affirmatively show a given matter no presumption will be indulged against the Journals to destroy the validity of the act.—Ex parte Howard-Harrison Co., 119 Ala., 484; Walker v. Griffith, 60 Ala., 361; 85 Am. Dec., 348.

A provision of the Federal Constitution that full faith and credit shall be given in each State to the public acts and records of others does not apply to judgments rendered by the court of one State against a nonresident debtor in the absence of personal service.—L. &. N. R. Co. v. Nash., 118 Ala., 477.

[SEC. 59.]—

A member of the Legislature cannot be elected by that body judge of a new circuit then created.—State v. Porter, 1 Ala., 688.

Nor appointed Police Judge of the City of Birmingham, the same being a civil office of profit under the State, created by the body of which he was a member.—Montgomery v. State, 107 Ala., 372.

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may be filled by election by the people.

SEC. 60. No person convicted of embezzlement of the public money, bribery, perjury, or other infamous crime, shall be eligible to the Legislature, or capable of holding any office of trust or profit in this State.

SEC. 61. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either House as to change its original purpose.

SEC. 62. No bill shall become a law until it shall have been referred to a standing committee of each House, acted upon by such committee in session, and returned therefrom, which facts shall affirmatively appear upon the Journal of each House.

SEC. 63. Every bill shall be read on three different days in each House, and no bill shall become a law, unless on its final passage it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered upon the Journals, and a majority of each House be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

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offices as may be filled by election by the people.

SEC. 18. No person hereafter convicted of embezzlement of the public money, bribery, perjury or other infamous crime, shall be eligible to the General Assembly, or capable of holding any office of trust or profit in this State.

SEC. 19. No law shall be passed except by bill, and no bill shall be so altered or amended on its passage through either House as to change its original purpose.

SEC. 20. No bill shall become a law until it shall have been referred to a committee of each House and returned therefrom.

SEC. 21. Every bill shall be read on three different days in each House; and no bill shall become a law unless, on its final passage, it be read at length, and the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the Journals, and a majority of each House be recorded thereon as voting in its favor, except as otherwise provided in this Constitution.

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[SEC. 61.]—

Compliance presumed unless the contrary shown.—State v. Buckley, 54 Ala., 599.

Bill may be amended, or a substitute adopted, so long as the original purpose be not changed. —State v. Buckley, 54 Ala., 599; Harrison v. Gordy, 57 Ala., 49; Stein v. Leeper, 78 Ala., 517; Abernathy v. State, 78 Ala., 411; Donnelly v. State, 78 Ala., 453; Dunbar v. Frazer, 78 Ala., 538; Hall v. State, 82 Ala., 562.

[SEC. 62.]—

Compliance presumed unless contrary shown.—State v. Buckley, 54 Ala., 599.

Committee may report an amendatory or substitute bill.—State v. Buckley, 54 Ala., 599.

To report a bill to the House "without recommendation," is "action" thereon by the committee.—Walker v. Montgomery, 36 So. Rept., 25.

[SEC. 63.]—

A bill becomes a law only when it has gone through all the required forms; court may search the Journal, the record.—Jones v. Hutchinson, 43 Ala., 721; Moody v. State, 48 Ala., 115; Moog v. Randolph, 77 Ala., 597; Sayre v. Pollard, 77 Ala., 608.

Does not require that everything to become law shall be read three times; a Code may be enacted by bill read three times.—Dew v. Cunningham, 28 Ala., 466; Hoover v. State, 59 Ala., 57; Bales v. State, 63 Ala., 30.

Presumption is that bill was read three times. —Walker v. Griffith, 60 Ala., 361.

Yeas and nays must appear affirmatively from the Journal.—State v. Buckley, 54 Ala., 599; Walker v. Griffith, 60 Ala., 361.

"Final passage" is the vote on its passage in either House after three readings on three different days in that House.—State v. Buckley, 54 Ala., 599.

If an act as engrossed and signed varies materially in substance and legal effect from the bill as passed, neither is a constitutional enactment.—Jones v. Hutchinson, 43 Ala., 721; Moody v. State, 48 Ala., 115; Moog v. Randolph, 77 Ala., 597; Sayre v. Pollard, 77 Ala., 608; Stein v. Leeper, 78 Ala., 517; Abernathy v. State, 78 Ala., 453; Dunbar v. Frazier, 78 Ala., 538.

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SEC. 64. No amendment to bills shall be adopted except by a majority of the House wherein the same is offered, nor unless the amendment with the names of those voting for and against the same shall be entered at length on the Journal of the House in which the same is adopted, and no amendment to bills by one House shall be concurred in by the other, unless a vote be taken by yeas and nays, and the names of the members voting for and against the same be recorded at length on the Journal; and no report of a committee of conference shall be adopted in either House, except upon a vote taken by yeas and nays, and entered on the Journal, as herein provided for the adoption of amendments.

SEC. 65. The Legislature shall have no power to authorize lotteries or gift enterprises for any purposes, and shall pass laws to prohibit the sale in this State of lottery or gift enterprise tickets, or tickets in any scheme in the nature of a lottery; and all acts, or parts of acts heretofore passed by the Legislature of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

SEC. 66. The presiding officer of each House shall, in the presence of the House

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SEC. 22. No amendment to bills by one House shall be concurred in by the other, except by a vote of a majority thereof, taken by yeas and nays, and the names of those voting for and against recorded upon the Journals; and reports of committees of conference shall in like manner be adopted in each House.

SEC. 26. The General Assembly shall have no power to authorize lotteries or gift enterprises for any purpose, and shall pass laws to prohibit the sale of lottery or gift-enterprise tickets, or tickets in any scheme in the nature of a lottery, in this State; and all acts, or parts of acts, heretofore passed by the General Assembly of this State, authorizing a lottery or lotteries, and all acts amendatory thereof, or supplemental thereto, are hereby avoided.

SEC. 27. The presiding officer of each House shall, in the presence of the House

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[SEC. 64.]—

Yeas and nays must appear on the Journal; compliance with certain other requirements presumed.—State v. Buckley, 54 Ala., 599.

Where the record does not show in what the amendment consists, it will be presumed that it was matter in which only a majority vote is necessary.—Jackson v. State, 131 Ala., 21.

The Journal must show that the bill did not receive the required vote in order to declare it void.—Jackson v. State, 131 Ala., 21.

An act entitled "an act to establish a text-book board for public schools" held sufficient.—State v. Griffin, 132 Ala., 47.

[SEC. 65.]—

The Legislature has no authority to license slot machines or to authorize the carrying on of a lottery.—Loiseau v. State, 114 Ala., 34 modifying Buckalew v. State, 62 Ala., 334.

A statute authorizing certain persons to carry on a lottery held to violate the Constitution.—Horst v. Moses, 48 Ala., 129.

To be a criminal lottery, there must be a consideration, and when small amounts are hazarded to gain large ones, determined by chance; where choice, nor skill exerts any affect, it is prohibited.—Loiseau v. State, 114 Ala., 34; Reeves v. State, 105 Ala., 120; 49 Ala., 396; 88 Ala., 196; 138 Ala., 86.

If, in the use of a machine, a consideration is paid, and there is gambling, it is a lottery.—Loiseau v. State, 114 Ala., 34; Buckalew v. State, 62 Ala., 334, modified.

"Lot" is a contrivance to determine a question by chance, or without the action of man's choice or will.—Loiseau v. State, 114 Ala., 34.

[SEC. 66.]—

Most Constitutions contain a provision that, after the passage of a bill, it shall be engrossed with the signature of the presiding officer, and that it shall then be presented to the Governor for his signature, and the bill which is signed by the presiding officer of the two Houses and by the Governor must be the same bill which passed the Legislature.—Moody v.

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over which he presides, sign all bills and joint resolutions passed by the Legislature, after the same shall have been publicly read at length immediately before signing, and the fact of reading and signing shall be entered upon the Journal; but the reading at length may be dispensed with by a two-thirds vote of a quorum present, which fact shall also be entered on the Journal.

SEC. 67. The Legislature shall prescribe by law the number, duties and compensation of the officers and employes of each House, and no payment shall be made from the State Treasury or be in any way authorized to any person except to an acting officer or employe elected or appointed in pursuance of law.

SEC. 68. The Legislature shall have no power to grant or to authorize or require any county or municipal authority to grant, nor shall any county or municipal authority have power to grant any extra compensation, fee or allowance to any public officer, servant or employe, agent or contractor, after service shall have been rendered or contract made, nor to increase or decrease the fees and compensation of such officers during their terms of office; nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law; provided this section shall not apply to allowances made by Commissioners' Courts or Boards of Revenue to county officers for *ex officio* services, nor prevent the Legislature from increasing or diminishing at any time the allowance to Sheriffs or other officers for feeding, transferring or guarding prisoners.

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over which he presides, sign all bills and joint resolutions passed by the General Assembly, after the titles have been publicly read immediately before signing, and the fact of signing shall be entered on the Journal.

SEC. 28. The General Assembly shall prescribe by law the number, duties, and compensation of the officers and employes of each House; and no payment shall be made from the State treasury, or be in any way authorized to any person, except to an acting officer or employe, elected or appointed in pursuance of law.

SEC. 29. No bill shall be passed giving any extra compensation to any public officer, servant or employe, agent or contractor, after the service shall have been rendered, or contract made; nor shall any officer of the State bind the State to the payment of any sum of money but by authority of law.

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State, 48 Ala., 115; S.C., 17 Am. Rep., 28; People v. Platt, 2 S.C.N.S., 150; Brady v. West, 50 Miss., 68.

The presumption is indulged, in the absence of proof, that the bill signed by the Speaker of the House or President of the Senate and approved by the Governor is the bill passed by the Legislature.—Ex parte Howard-Harrison Co., 119 Ala., 484.

The House of Representatives may elect the Speaker of the House pro tempore who may sign bills as the Speaker of the House when the regular Speaker is sick, absent, or unable to discharge the duties of the office.—Robertson v. State, 130 Ala., 164.

The bill enrolled, and the Journals of the two Houses is the record of its own existence and integrity to determine whether the bill enrolled and signed and approved is in fact regularly and constitutionally enacted.—Robertson v. State, 130 Ala., 164; Ex parte Howard-Harrison Co., 119 Ala., 484; see 143 U. S., 678; 23 Am. & Eng. Enc. of Law, 212; 89 Am. Dec., 93.

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SEC. 69. All stationery, printing, paper and fuel used in the legislative and other departments of government shall be furnished and the printing, binding, and distribution of laws, Journals, department reports, and all other printing, binding and repairing and furnishing the halls and rooms used for the meeting of the Legislature and its committees, shall be performed under contract, to be given to the lowest responsible bidder below a maximum price, and under such regulations as shall be prescribed by law; no member or officer of any department of the government shall be in any way interested in such contract, and all such contracts shall be subject to the approval of the Governor, Auditor and Treasurer.

SEC. 70. All bills for raising revenue shall originate in the House of Representatives. The Governor, Auditor and Attorney General shall, before each regular session of the Legislature, prepare a general revenue bill to be submitted to the Legislature, for its information, and the Secretary of State shall have printed for the use of the Legislature a sufficient number of copies of the bill so prepared, which the Governor shall transmit to the House of Representatives as soon as organized, to be used or dealt with as that House may elect. The Senate may propose amendments to revenue bills.

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SEC. 30. All stationery, printing, paper, and fuel used in the legislative and other departments of government, shall be furnished, and the printing, binding, and distribution of laws, Journals, department reports, and all other printing and binding, and repairing and furnishing the halls and rooms used for the meetings of the General Assembly and its committees, shall be performed under contract, to be given to the lowest responsible bidder below a maximum price, and under such regulations as shall be prescribed by law; no member or officer of any department of the government shall be in any way interested in such contracts, and all such contracts shall be subject to the approval of the Governor, State Auditor, and State Treasurer.

SEC. 31. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose amendments, as in other bills.

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[SEC. 69.]—

The constitutional provision as to public printing, is not self-executing.—Brown v. Seay, 86 Ala., 122.

[SEC. 70.]—

Some Constitutions contain provisions that no bill shall originate in either House during the last ten days of the session. The object of such provision is to prevent hasty legislation and to compel careful examination of proposed laws. Many of the State Constitutions provide that no bill shall become law until it has been read on three several days in each House, and the Journal must show whether this rule has been complied with or not. This is not a mere rule of order, but it is for the protection of the public interest and the citizens at large. In the reading of the bill, it is sufficient to read the written document that is adopted, though something else may become the law in consequence of its passage by reason of being referred to in it.—Due v. Cunningham, 28 Ala., 466; Cooley Const. Lim., 168.

Mandatory.—Perry Co. v. S. M. & M. R. Co., 58 Ala., 546.

"Raising revenue" is the levy of a tax as the means of collecting revenue whether receipts are increased or diminished.—Perry Co. v.S. M. & M. R. Co., 58 Ala., 546.

A statute regulating the granting of licenses to retail is not a bill to raise revenue.—Dunbar v. Frazer, 78 Ala., 538.

A statute the purpose of which is to provide for the dispensing of liquors by municipalities, is not a bill for raising revenue.—Dunbar v. Frazer, 78 Ala., 538; Sheppard v. Dowling 127 Ala., 1.

A statute to establish and carry on a dispensary is not one for raising revenue.—Sheppard v. Dowling, 127 Ala., 9.

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No revenue bill shall be passed during the last five days of the session.

SEC. 71. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State, for interest on the public debt, and for the public schools. The salary of no officer or employe shall be increased in such bill, nor shall any appropriation be made therein for any officer or employe unless his employment and the amount of his salary have already been provided for by law. All other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 72. No money shall be paid out of the treasury except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

SEC. 73. No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

SEC. 74. No act of the Legislature shall authorize the investment of any trust fund by executors, administrators, guardians or other trustees in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made.

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SEC. 32. The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative, and judicial departments of the State, interest on the public debt, and for the public schools; all other appropriations shall be made by separate bills, each embracing but one subject.

SEC. 33. No money shall be paid out of the treasury, except upon appropriations made by law, and on warrant drawn by the proper officer in pursuance thereof; and a regular statement and account of receipts and expenditures of all public moneys shall be published annually, in such manner as may be by law directed.

SEC. 34. No appropriation shall be made to any charitable or educational institution not under the absolute control of the State, other than normal schools established by law for the professional training of teachers for the public schools of the State, except by a vote of two-thirds of all the members elected to each House.

SEC. 35. No act of the General Assembly shall authorize the investment of any trust fund by executors, administrators, guardians, and other trustees, in the bonds or stock of any private corporation; and any such acts now existing are avoided, saving investments heretofore made.

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[SEC. 71.]—

Appropriation for a local school must be by separate bill.—Woolf v. Taylor, 98 Ala., 254.

This provision applies only to legislative appropriations from State treasury.—State v. Street, 117 Ala., 203.

This article has no application to the appropriation by the Legislature of taxes which it delegates to the county authority.—State v. Street, 117 Ala., 203

[SEC. 72.]—

Conservative, not restrictive of legislative power.—Smith v. Speed, 50 Ala., 276.

A resolution of the Senate is not a law.—Reynolds v. Blue, 47 Ala., 711.

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SEC. 75. The power to change the venue in civil and criminal causes is vested in the courts, to be exercised in such manner as shall be provided by law.

SEC. 76. When the Legislature shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session, except by a vote of two-thirds of each House. Special sessions shall be limited to thirty days.

SEC. 77. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture or commodity, but any county or municipality may appoint such officers when authorized by law.

SEC. 78. No act of the Legislature changing the seat of government of the State shall become a law until the same shall have been submitted to the qualified electors of the State at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location.

SEC. 79. A member of the Legislature who shall solicit, demand or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, association or person, any money, office, appointment, employment, reward, thing of value, or enjoyment, or of personal advantage or promise thereof, for his vote or official influence, or for withholding the same; or with an understanding, expressed or implied, that his vote or official action

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SEC. 36. The power to change the venue, in civil and criminal causes, is vested in the courts, to be exercised in such manner as shall be provided by law.

SEC. 37. When the General Assembly shall be convened in special session, there shall be no legislation upon subjects other than those designated in the proclamation of the Governor calling such session.

SEC. 38. No State office shall be continued or created for the inspection or measuring of any merchandise, manufacture, or commodity; but any county or municipality may appoint such officers, when authorized by law.

SEC. 39. No act of the General Assembly changing the seat of government of the State shall become a law until the same shall have been submitted to the qualified electors of the State at a general election, and approved by a majority of such electors voting on the same; and such act shall specify the proposed new location.

SEC. 40. A member of the General Assembly, who shall corruptly solicit, demand, or receive, or consent to receive, directly or indirectly, for himself or for another, from any company, corporation, or person, any money, office, appointment, employment, reward, thing of value or enjoyment, or of personal advantage, or promise thereof, for his vote or official influence, or for withholding the same; or with an understanding, expressed or implied, that his vote or offi-

[SEC. 77.]—

Is something which can be accomplished by looking at, weighing or measuring the thing to be inspected, or applying to it some critical test.—State v. McGough, 118 Ala., 154.

When testimony or evidence is to be taken and examined, it is not inspection in any sense. —State v. McGough, 118 Ala., 154.

This is an independent provision, disconnected from all other parts of the Constitution. There is nothing which modifies, limits or explains it.—State v. McGough, 118 Ala., 154.

Provision is so clear that it needs no construction.—State v. McGough, 118 Ala., 154.

This section does not prohibit the inspection of any merchandise or commodity.—State v. McGough, 118 Ala., 159.

The only limitation of the Legislature is that no State office shall be created.—State v. McGough, 118 Ala., 159.

An act providing for an oil inspector for the State is violative of this provision.—State v. McGough, 118 Ala., 159.

An act entitled "to provide for the inspection and sale of illuminating oils by the State" was held void in that it created an office for the inspection and measuring of merchandise.—State v. McGough, 118 Ala., 159, Brickell, C. J., dissenting.

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shall be in any way influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another as the consideration for his vote, or influence, or for withholding the same; or shall give or withhold his vote or influence in consideration of the payment or promise of such money, advantage, matter or thing to another, shall be guilty of bribery within the meaning of this Constitution; and shall incur the disabilities and penalties provided thereby for such offense, and such additional punishment as is or shall be provided by law.

SEC. 80. Any person who shall, directly or indirectly, offer, give or promise any money, or thing of value, testimonial, privilege or personal advantage, to any executive or judicial officer or member of the Legislature to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as may be provided by law.

SEC. 81. The offense of corrupt solicitation of members of the Legislature or of public officers of this State or of any municipal division thereof, and any occupation or practice of solicitation of such members or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment in the penitentiary; and the Legislature shall provide for the trial and punishment of the offenses enumerated in the two preceding sections, and shall require the Judges to give the same specially in charge to the Grand Juries in all the counties of this State.

SEC. 82. A member of the Legislature who has a personal or private interest in any measure or bill proposed or pending before the Legislature, shall disclose the fact to the House of which he is a member, and shall not vote thereon.

SEC. 83. In all elections by the Legislature the members shall vote *viva voce,* and the votes shall be entered on the Journal.

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cial action shall be in any way influenced thereby; or who shall solicit or demand any such money or other advantage, matter or thing aforesaid, for another, as the consideration of his vote or official influence, or for withholding the same; or shall give or withhold his vote or influence, in consideration of the payment or promise of such money, advanatge, matter or thing, to another, shall be guilty of bribery within the meaning of this Constitution, and shall incur the disabilities provided thereby for such offense, and such additional punishment as is, or shall be, provided by law.

SEC. 41. Any person who shall, directly or indirectly, offer, give, or promise any money or thing of value, testimonial, privilege, or personal advantage, to any executive or judicial officer, or member of the General Assembly, to influence him in the performance of any of his public or official duties, shall be guilty of bribery, and be punished in such manner as shall be provided by law.

SEC. 42. The offense of corrupt solicitation of members of the General Assembly, or of public officers of this State, or of any municipal division thereof, and any occupation or practice of solicitation of such members, or officers, to influence their official action, shall be defined by law, and shall be punished by fine and imprisonment.

SEC. 43. A member of the General Assembly, who has a personal or private interest in any measure or bill, proposed or pending before the General Assembly, shall disclose the fact to the House of which he is a member, and shall not vote thereon.

SEC. 44. In all elections by the General Assembly, the members shall vote *viva voce,* and the votes shall be entered on the Journals.

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SEC. 84. It shall be the duty of the Legislature to pass such laws as may be necessary and proper to decide differences by arbitrators to be appointed by the parties who may choose that mode of adjustment.

SEC. 85. It shall be the duty of the Legislature, at its first session after the ratification of this Constitution, and within every subsequent period of twelve years, to make provision by law for revising, digesting and promulgating the public statutes of this State, of a general nature, both civil and criminal.

SEC. 86. The Legislature shall pass such penal laws as it may deem expedient to suppress the evil practice of dueling.

SEC. 87. It shall be the duty of the Legislature to regulate by law the cases in which deduction shall be made from the salaries or compensation of public officers for neglect of duty in their official capacities, and the amount of such deduction.

SEC. 88. It shall be the duty of the Legislature to require the several counties of this State to make adequate provision and maintenance of the poor.

SEC. 89. The Legislature shall not have power to authorize any municipal

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SEC. 45. It shall be the duty of the General Assembly to pass such laws as may be necessary and proper to decide differences by arbitrators, to be appointed by the parties who may choose that mode of adjustment.

SEC. 46. It shall be the duty of the General Assembly, at its first session after the ratification of this Constitution, and within every subsequent period of ten years, to make provision by law for the revision, digesting and promulgation of the public statutes of this State of a general nature, both civil and criminal.

SEC. 47. The General Assembly shall pass such penal laws as they may deem expedient to suppress the evil practice of dueling.

SEC. 48. It shall be the duty of the General Assembly to regulate by law the cases in which deductions shall be made from the salaries of public officers, for neglect of duty in their official capacities, and the amount of such deductions.

SEC. 49. It shall be the duty of the General Assembly to require the several counties of this State to make adequate provision for the maintenance of the poor.

SEC. 50. The General Assembly shall not have power to authorize any munici-

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[SEC. 85.]—

The constitutional provision for codifying the statute does not of itself work an abrogation of statutes omitted from the Code when adopted. —Benners v. State, 124 Ala., 97.

Statutes passed at the same session which adopts the Code, but not codified, but only incorporated in the Code, hence not adopted, must derive their validity from the original enactment and not from the adoption of the Code. —Builders' Co. v. Lucas & Co., 119 Ala., 202.

[SEC. 87.]—

Neglect of duty only ground provided in statute for deduction of salary of Circuit Judges.—White v. State, ex rel. Denson, 123 Ala., 577.

Failure to perform acts required on account of sickness of family or other circumstances and conditions providential in their character is not neglect of duty within meaning of this provision.—White v. State, 123 Ala., 577.

To constitute a neglect of duty there must be not only a failure by carelessness and design on the part of the judge to perform his duty, but he must have the capacity to perform.—White v. State, 123 Ala., 577.

[SEC. 89.]—

The power of municipal corporations to make by-laws is limited by the Federal and State Constitutions, and the by-laws must be in harmony with the general laws of the State and with the charters of the respective corporations. If they conflict with either they are void. By-laws of municipal corporations must also be reasonable and they must be certain: not left to the discretion of the officers or court which impose penalty for violating it after conviction, and it should be in harmony with the general principles of the common law and of the State.—Mayor of Huntsville v. Phelps, 27 Ala., 55, overruling Mayor of Mobile v. Yuille, 3 Ala., 173; Ex parte Burnett, 30 Ala., 461; Craig v. Burnett, 32 Ala., 728; Cooley Const. Lim., 240-242; Milliken v. City Council, 54 Tex., 388; s.c., 38 Am. Rep., 629.

Municipal corporations existed at common law and they had there but few powers beyond those of electing their officers and removing their persons. Such corporations might sue and

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corporation to pass any laws inconsistent with the general laws of this State.

SEC. 90. In the event of the annexation of any foreign territory to this State, the Legislature shall enact laws extending to the inhabitants of the ac-

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pal corporation to pass any laws inconsistent with the general laws of this State.

SEC. 51. In the event of annexation of any foreign territory to this State, the General Assembly shall enact laws extending to the inhabitants of the acquired

be sued, might have a common seal, might hold property, personal and real, necessary for the corporate purposes, and might convey the same; might make by-laws necessary and proper, but as a rule the power of these corporations are conferred expressly or impliedly and with a very few exceptions which are incidental powers from the charter or the general law under which they exist is the measure of authority to be exercised, and the trend of the courts has been to confine these corporations to the exercise of those powers only which were granted by the charter, necessarily implied therefrom or that were incidental to the existence.—Cooley Const. Lim., 233, 234.

Municipal corporations can hold and own property only for corporate purposes, but as the Legislature has power to take from the corporation its charter, it would thereby be deprived of its property or corporate capacity to hold it; hence the Legislature has power, at least, to control the property of municipal corporations, but whether the State can directly take away the corporate property or convert it into another use, or take the property to itself, is a different question. It would seem that under our form of government, where a corporation holds property and has acquired vested rights to it, that the Legislature could not confiscate it to its own use; the public faith of the government is pledged against such action. —Dartmouth Col. v. Woodward, 4 Wheat., 518.

"General law" is a law operative throughout the entire State; if there are excepted parts, the law is public, not general.—Holt v. Mayor, 111 Ala., 369; Anniston v. So. Ry. Co., 112 Ala., 557.

Not intended to prevent the delegation to counties of quasi legislative powers.—Askew v. Hale Co., 54 Ala., 639; Stanfill v. Dallas Co., 80 Ala., 287; Dunn v. Wilcox Co., 85 Ala., 144.

Nor to limit Legislature in conferring police powers on municipal corporations.—Ex parte Cowert, 92 Ala., 94.

The Legislature cannot ratify an ordinance which it had no authority to allow adopted.—Hewlett v. Camp, 115 Ala., 499.

Where a schedule of license is adopted by a city, which includes an occupation which is prohibited by the general laws of the State, it is void.—Hewlett v. Camp, 115 Ala., 499.

An act providing that it should be operative only after a vote in its favor of a majority of the voters is valid.—Jackson v. State, 131 Ala., 25; Clark v. Jack, 60 Ala., 271; Stanfill v. Court of Rev., 80 Ala., 287; Dunn v. Court of Rev., 85 Ala., 144; McGraw v. Com., 89 Ala., 407; Williams v. Board of Rev., 123 Ala., 432; State v. Crook 126 Ala., 600.

The Legislature cannot revive void acts of the municipalities if it could not have authorized such originally.—Hewlett v .Camp, 115 Ala., 499.

The Legislature cannot by indirection defeat or avoid the plain constitutional provisions —Hewlett v. Camp, 115 Ala., 502.

The Legislature, in the exercise of police power may authorize a municipality to regulate or to prohibit the slaughtering of animals within its police jurisdiction.—Boyd v. City of Mont., 117 Ala., 677.

Municipalities may provide for the inspection and condemnation of meats to be sold within their jurisdiction. Salus populi suprema est lex.—Boyd v. City of Mont., 117 Ala., 680.

A proper regulation of slaughter houses in a city and for the inspection of fresh meats intended for sale is both sanitary and sanitory.—Boyd v. City of Mont., 117 Ala., 677; Slaughter House cases, 16 Wall., 36.

The Legislature may authorize municipalities to prohibit the sale of intoxicating liquors. —Cowert v. State, 92 Ala., 94; Ex parte Russellville, 95 Ala., 19.

The Legislature may abolish or dissolve municipal corporations.—Amy Co. v. Selma, 77 Ala., 103.

The Legislature cannot by subsequent special statutes authorize municipalities to levy a license tax upon express companies when there is a general statute authorizing the State to levy such tax, which provides that it shall be in lieu of all other taxes.—So. Ex. Co. v. Tuscaloosa, 132 Ala., 326, Sharp, J., dissenting. Note.—It appears to the writer that this decision is wrong.

A municipality cannot license or establish or authorize a business such as pool-selling or horse racing which is forbidden by the general law, nor can the Legislature authorize them so to do.—Hewlett v. Camp, 115 Ala., 499.

The purpose of this provision of the Constitution is to prohibit the Legislature from conferring specified authority upon municipal corporations which are inconsistent with the general laws of the State.—Holt v. Birmingham, 111 Ala., 369.

Where a municipality licenses an occupation which is prohibited by the general laws such license is void and the Legislature cannot ratify it by a subsequent act.—Hewlett v. Camp, 115 Ala., 499.

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quired territory all the rights and privileges which may be required by the terms of acquisition not inconsistent with this Constitution. Should the State purchase such foreign territory, the Legislature, with the approval of the Governor, shall be authorized to expend any money in the treasury not otherwise appropriated, and, if necessary, to provide also for the issuance of State bonds, to pay for the purchase of such foreign territory.

SEC. 91. The Legislature shall not tax the property, real or personal, of the State, counties or other municipal corporations, or cemeteries; nor lots in incorporated cities or towns, or within one mile of any city or town to the extent of one acre, nor lots one mile or more distant from such cities or towns to the extent of five acres, with the buildings thereon, when same are used exclusively for religious worship, for schools, or for purposes purely charitable.

SEC. 92. The Legislature shall by law prescribe such rules and regulations as may be necessary to ascertain the value of real and personal property exempted from sale under legal process by this Constitution, and to secure the same to the claimant thereof as selected.

SEC. 93. The State shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association or corporation.

SEC. 94. The Legislature shall not

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territory all the rights and privileges which may be required by the terms of the acquisition, anything in this Constitution to the contrary notwithstanding.

SEC. 52. The General Assembly shall not tax the property, real and personal, of the State, counties, or other municipal corporations, or cemeteries; nor lots in incorporated cities or towns, or within one mile of any city or town, to the extent of one acre, nor lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable; nor such property, real or personal, to an extent not exceeding twenty-five thousand dollars in value, as may be used exclusively for agricultural or horticultural associations of a public character.

SEC. 53. The General Assembly shall by law prescribe such rules and regulations as may be necessary to ascertain the value of personal and real property exempted from sale under legal process by this Constitution, and to secure the same to the claimant thereof as selected.

SEC. 54. The State shall not engage in works of internal improvement, nor lend money or its credit in aid of such; nor shall the State be interested in any private or corporate enterprise, or lend money or its credit to any individual, association, or corporation.

SEC. 55. The General Assembly shall

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[SEC. 93.]—

A statute authorizing municipal corporations to regulate the liquor traffic is not violative of this provision.—Sheppard v. Dowling, 127 Ala., 1.

A statute to establish and carry on a dispensary which is to regulate the liquor traffic, is within the police power of the State. Though the State has a pecuniary interest in the business, it is a necessary incident to the exercise of the undoubted power.—Sheppard v. Dowling, 127 Ala., 9.

[SEC. 94.]—

Does not apply to county controlling liquor traffic by dispensaries.—Sheppard v. Dowling, 127 Ala., 1; Garland v. Board of Revenue, 87 Ala., 223.

Statute to establish and carry on a dispen-

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have power to authorize any county, city, town, or other subdivision of this State to lend its credit, or to grant public money or thing of value in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in any such corporation, association or company, by issuing bonds or otherwise.

SEC. 95. There can be no law of this State impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the Legislature shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State. After suit has been commenced on any cause of action, the Legislature shall have no power to

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have no power to authorize any county, city, town, or other subdivision of this State, to lend its credit, or to grant public money or thing of value, in aid of, or to any individual, association or corporation whatsoever, or to become a stockholder in any such corporation, association, or company, by issuing bonds, or otherwise.

SEC. 56. There can be no law of this State impairing the obligation of contracts by destroying or impairing the remedy for their enforcement; and the General Assembly shall have no power to revive any right or remedy which may have become barred by lapse of time, or by any statute of this State.

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sary is not a private enterprise, but a governmental concern; the Legislature may authorize towns and counties to carry on the liquor traffic as an incident to the regulation thereof.—Sheppard v. Dowling, 127 Ala., 11.

[SEC. 95.]—

SEE NOTES, SEC. 22, P. 18.

Substantially lessening or impairing the value of the contract is what is forbidden; no reference to the degree of impairment.—Edwards v. Williams, 70 Ala., 145; Adams v. Creen, 100 Ala., 218; Osborne v. Johnson W. P. Co., 99 Ala., 309.

Does not apply to claims against the State, or against a special fund controlled by it as the fine and forfeiture fund.—Palmer v. Fitts, 51 Ala., 489; Sessions v. Boykin, 78 Ala., 328; Brown v. Parris, 93 Ala., 314; Harold v. Herrington, 95 Ala., 395; See also citations to Art. I., Sec. 23.

The operation of a general law shall not be suspended for the benefit of any individual.

An act validating the existence of a corporation is not within this provision.—Sanche v. Webb, 110 Ala, 214.

Retrospective laws are not necessarily ex post facto.—Bloodgood v. Cammack, 5 S. & P., 276.

Ex post facto law applies exclusively to penal and criminal cases.—Bloodgood v. Cammack, 5 S. & P., 276; Aldridge v. Tuscumbia, 2 S. & P., 199.

Statutes affecting the competency of witnesses are not ex post facto.—Walthall v. Walthall, 42 Ala., 450.

Statutes authorizing juries to fix penalties are not ex post facto.—Turner v. State, 40 Ala., 21.

A statute increasing the costs may be ex post facto.—Caldwell v. State, 55 Ala., 133.

When a penalty has accrued it is a vested right, but the commencement of the suit does not vest the right.—Taylor v. Rushing, 2 Stew., 160; Pope v. Lewis, 4 Ala., 487.

A statute imposing the payment of $200 on insurance company for the benefit of a medical college was held to create a vested right.—Med. Col. v. Muldon, 46 Ala., 603.

The Legislature may alter, enlarge, modify or confer a remedy for existing legal rights.—Coosa Co. v. Barclay, 30 Ala., 120.

A remedy may act retrospectively without destroying vested rights.—Bartlett v. Lang, 2 Ala., 401; Paschall v. Whitsett, 11 Ala., 472.

Statutes as to the competency of witnesses do not affect vested rights.—Walthall v. Walthall, 42 Ala., 450; Goodlett v. Kelly, 74 Ala., 213.

The Legislature may either extend the period of the statute of limitations, or strike them down entirely, provided it does not destroy vested rights.—Scales v. Otts, 127 Ala., 582.

Statutes which affect the remedy only do not destroy vested rights.—Abbett v. Page, 92 Ala., 571.

The right to institute claim suits.—Hardy v. Ingram, 84 Ala., 544; 83 Ala., 408, 440.

take away such cause of action, or destroy any existing defense to such suit.

SEC. 96. The Legislature shall not enact any law not applicable to all the counties in the State, regulating costs and charges of courts, or fees, commissions or allowances of public officers.

SEC. 97. The Legislature shall not authorize payment to any person of the salary of a deceased officer beyond the date of his death.

SEC. 98. The Legislature shall not retire any officer on pay, or part pay, or make any grant to such retiring officer.

SEC. 99. Lands belonging to or under the control of the State shall never be donated, directly or indirectly, to private corporations, associations, or individuals, or railroad companies; nor shall such lands be sold to corporations or associations for a less price than that for which they are subject to sale to individuals; provided, that nothing contained in this

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SEE FOLLOWING CASES.

Removal from homestead.—Banks v. Speers, 97 Ala., 560.

Lien of corporations upon shares of stockholders.—101 Ala., 304.

Taxes having a retroactive operation.—81 Ala., 110.

Peremptory challenges of jury.—86 Ala., 617.

Exemptions from jury service.—Dunlap v. State, 76 Ala., 460.

Conveyances as conclusive evidence.—Doe v. Minge, 56 Ala., 121.

Estates of married women. Maxwell v. Grace, 85 Ala., 579; Memphis Co. v. Bynum, 92 Ala., 335.

Reducing salary of Circuit Judge.—White v. State, 123 Ala., 577.

Control over public corporations.—Univ. v. Winston, 5 Stew. & Port., 17.

Erection of toll gates and toll bridges.—Powell v. Sammons, 31 Ala., 552; Dyer v. Tuscaloosa Co., 2 Port., 296.

Liens not a vested right.—Martin v. Hewitt, 44 Ala., 418.

A right springing from contract is not protected.—M. & G. R. Co., v. Peebles, 47 Ala., 317.

Mortgages, foreclosure by judicial proceeding.—Bugbee v. Howard, 32 Ala., 713.

Prohibiting issue of execution.—Hudspeth v. Davis, 41 Ala., 389.

Forfeiting charter of corporations.—State v. Tombeckbee Bk., 2 Stew., 30.

Redemption of land sold under execution or mortgage.—Beck v. Burnett, 22 Ala., 822.

The power to regulate remedy and mode of procedure.—Ex parte Pollard, 40 Ala., 77.

Breach of contract, a penal offense.—Blann v. State, 39 Ala., 353.

Creating a new cause of action for which there is no remedy.—30 Ala., 120.

Admission of parol evidence to prove consideration of contract.—41 Ala., 423.

Prohibiting transfer of contracts, choses in actions.—23 Ala., 168.

Insolvent laws discharge debtor.—32 Ala., 332.

Authorizing loan of 2 per cent and 3 per cent funds.—36 Ala., 371.

Mode of conveying property under the control of the Legislature.—Warfield v. Reavis, 38 Ala., 518.

Exemptions from military service.—Ex parte Tate, 39 Ala., 254.

section shall prevent the Legislature from granting a right of way, not exceeding one hundred and twenty-five feet in width, as a mere easement, for railroads or telegraph or telephone lines across State land, and the Legislature shall never dispose of the land covered by such right of way except subject to such easement.

SEC. 100. No obligation or liability of any person, association or corporation held or owned by this State, or by any county or other municipality thereof, shall ever be remitted, released or postponed, or in any way diminished, by the Legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability, or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the Legislature from providing by general law for the compromise of doubtful claims.

SEC. 101. No State or county official shall, at any time during his term of office, accept, either directly or indirectly, any fee, money, office, appointment, employment, reward or thing of value, or of personal advantage, or the promise thereof, to lobby for or against any measure pending before the Legislature, or to give or withhold his influence to secure the passage or defeat of any such measure.

SEC. 102. The Legislature shall never pass any law to authorize or legalize any marriage between any white person and a negro, or descendant of a negro.

SEC. 103. The Legislature shall provide by law for the regulation, prohibition, or reasonable restraint of common carriers, partnerships, associations, trusts, monopolies, and combinations of capital,

[SEC. 100.]

A statute providing for the removal of a courthouse if certain donations were made or when the revenue of the country would permit, and providing that a certain officer should determine or decide when the contingency happened, is valid.—Hand v. Stapleton, 135 Ala., 156.

[SEC. 103.]

Monopolies are not favorites, they were void at common law, hence need no special prohibition.—Elec. Co. v. Elec. Co., 94 Ala., 374; Birmingham Co. v. Birmingham Co., 79 Ala., 465. (See note, p. 22.)

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so as to prevent them or any of them from making scarce articles of necessity, trade or commerce, or from increasing unreasonably the cost thereof to the consumer, or preventing reasonable competition in any calling, trade or business.

LOCAL LEGISLATION.

SEC. 104. The Legislature shall not pass a special, private or local law in any of the following cases:

(1) Granting a divorce;

(2) Relieving any minor of the disabilities of nonage;

(3) Changing the name of any corporation, association or individual;

(4) Providing for the adoption or legitimizing of any child;

(5) Incorporating a city, town or village;

(6) Granting a charter to any corporation, association or individual;

(7) Establishing rules of descent or distribution;

(8) Regulating the time within which a civil or criminal action may be begun;

(9) Exempting any individual, private corporation or association from the operation of any general law;

(10) Providing for the sale of the property of any individual or estate;

(11) Changing or locating a county seat;

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SEC. 23. No special or local law shall be enacted for the benefit of individuals or corporations, in cases which are or can be provided for by a general law, or where the relief sought can be given by any court of this State; nor shall the operation of any general law be suspended by the General Assembly for the benefit of any individual, corporation, or association.

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[Sec. 23, Art. IV., 1875.]—

Definition of a general law.—Holt v. Mayor, 111 Ala., 369; Anniston v. So. Ry. Co., 112 Ala., 557. The Constitution of 1901 defines local laws.

Whether a case can be provided for by a general law is a question of legislative discretion.—Clarke v. Jack., 60 Ala., 271. (Changed by Constitution, 1901.)

It would seem that "corporations" means private corporations.—Ex parte City Council, 64 Ala., 463.

Does not prevent the exception from a general law of persons or things otherwise included.—Ex parte City Council, 64 Ala., 463.

Law authorizing the people to vote on the question of removal of county site is not a "special or local law."—Clarke v. Jack, 60 Ala., 271.

Divorce cannot be granted by special law.—Jones v. Jones, 95 Ala., 443.

Authorizing County Superintendent to pay debts contracted by school trustees is a healing statute and constitutional.—McKennie v. Gordon, 68 Ala., 442.

Quære, as to the power to pass special laws for the sale of property of minors, etc., since the adoption of this Constitution.—Munford v. Pearce, 70 Ala., 452. See Art IV, Sec. 1.

Suspending general law.—State v. Webb, 110 Ala., 214.

A county cannot levy a special tax for any purpose other than those expressed in the Constitution, if the special tax and general exceed one-half of 1 per cent.—Garland v. Mont. 87 Ala., 227; Hare v. Kennerly, 83 Ala., 608.

Under the Constitution of 1875 courts would indulge the intendment that the Legislature conformed to the constitutional requirements as to notice of local and special legislation unless the Journal affirmatively showed it was disregarded.—Keene v. Jefferson Co., 135 Ala., 465. But the Constitution of 1901 changes the rule.

The Legislature cannot ratify an irregular

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(12) Providing for a change of venue in any case;

(13) Regulating the rate of interest;

(14) Fixing the punishment of crime;

(15) Regulating either the assessment or collection of taxes, except in connection with the readjustment, renewal, or extension of existing municipal indebtedness created prior to the ratification of the Constitution of eighteen hundred and seventy-five;

(16) Giving effect to an invalid will, deed or other instrument;

(17) Authorizing any county, city, town, village, district or other political subdivision of a county, to issue bonds or other securities unless the issuance of said bonds or other securities shall have been authorized before the enactment of such local or special law, by a vote of the duly qualified electors of such county, township, city, town, village, district or other political subdivision of a county, at an election held for such purpose, in the manner that may be prescribed by law; provided, the Legislature may without such election, pass special laws to refund bonds issued before the date of the ratification of this Constitution;

(18) Amending, confirming or extending the charter of any private municipal corporation, or remitting the forfeiture thereof; provided, this shall not prohibit the Legislature from altering or rearranging the boundaries of the city, town or village;

(19) Creating, extending or impairing any lien;

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formation of a corporation under a general law; it does not suspend the remedy of quo warranto.—State ex rel. Sanche v. Webb, 110 Ala., 214.

The Constitution of 1901 provides that the courts shall determine whether it can be provided for by general law.

Where the Journal does not show the contrary, notice of a local law is presumed.—Harrison v. Gordy, 57 Ala., 49; Walker v. Griffith, 60 Ala., 361; Hall v. Steele, 82 Ala., 562; Jennings v. Russell, 92 Ala., 603.

Does not apply to curative or healing statutes.—McKennie v. Gordon, 68 Ala., 442; State v. Webb, 110 Ala., 214.

A statute creating a police commission for a municipality amends the charter, is a local law, and is therefore void, under Sec. 104, Const. of 1901.

Under the Constitution of 1875 the Journals need not affirmatively show that notice of local bills was given.—Keene v. Jefferson Co., 135 Ala., 465; Clark v. Jack, 60 Ala., 271; Harrison v. Goody, 57 Ala., 49. The Constitution of 1901 changes this rule.

Where the Record is silent as to publication of notice for local bills under the Constitution of 1875, it will be presumed that it was given. —Keene v. Jefferson Co., 135 Ala., 465.

Definition of a general law.—Holt v. Mayor, 111 Ala., 369; Anniston v. So. Ry. Co., 112 Ala., 557.

(20) Chartering or licensing any ferry, road or bridge;

(21) Increasing the jurisdiction and fees of Justices of the Peace or the fees of Constables;

(22) Establishing separate school districts;

(23) Establishing separate stock districts;

(24) Creating, increasing or decreasing fees, percentages or allowances of public officers;

(25) Exempting property from taxation or from levy or sale;

(26) Exempting any person from jury, road or other civil duty;

(27) Donating any lands owned by or under control of the State to any person or corporation;

(28) Remitting fines, penalties or forfeitures;

(29) Providing for the conduct of elections or designating places of voting, or changing the boundaries of wards, precincts or districts, except in the event of the organization of new counties, or the changing of the lines of old counties;

(30) Restoring the right to vote to persons convicted of infamous crimes, or crimes involving moral turpitude;

(31) Declaring who shall be liners between precincts or between counties.

SEC. 104. The Legislature shall pass general laws for the cases enumerated in this section, provided that nothing in this section or article shall affect the right of the Legislature to enact local laws regulating or prohibiting the liquor traffic; but no such local law shall be enacted unless notice shall have been given as required in Section 106 of this Constitution.

SEC. 105. No special, private or local law, except a law fixing the time of holding courts, shall be enacted in any case which is provided for by a general law, or when the relief sought can be given by any court of this State; and the courts, and not the Legislature, shall judge as to whether the matter of said law is provided for by a general law, and as to whether the relief sought can be

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given by any court; nor shall the Legislature indirectly enact any such special, private or local law by the partial repeal of a general law.

SEC. 106. No special, private or local law shall be passed on any subject not enumerated in Section 104 of this Constitution, except in reference to fixing the time of holding courts, unless notice of the intention to apply therefor shall have been published, without cost to the State, in the county or counties where the matter or thing to be affected may be situated, which notice shall state the substance of the proposed law and be published at least once a week for four consecutive weeks in some newspaper published in such county or counties, or if there is no newspaper published therein, then by posting the said notice for four consecutive weeks at five different places in the county or counties prior to the introduction of the bill; and proof by affidavit that said notice has been given shall be exhibited to each House of the Legislature, and said proof spread upon the Journal. The courts shall pronounce void every special, private or local law which the Journals do not affirmatively show was passed in accordance with the provisions of this section.

SEC. 107. The Legislature shall not, by a special, private or local law, repeal or modify any special, private or local law except upon notice being given and shown as provided in the last preceding section.

SEC. 108. The operation of a general law shall not be suspended for the benefit of any individual, private corporation or association; nor shall any individual, private corporation or association be exempted from the operation of any general law except as in this article otherwise provided.

SEC. 109. The Legislature shall pass general laws under which local and private interests shall be provided for and protected.

SEC. 110. A general law within the meaning of this article is a law which applies to the whole State; a local law

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SEC. 24. No local or special law shall be passed on a subject which cannot be provided for by a general law, unless notice of the intention to apply therefor shall have been published in the locality where the matter or things to be affected may be situated; which notice shall be at least twenty days prior to the introduction into the General Assembly of such bill, and the evidence of such notice having been given shall be exhibited to the General Assembly before such bill shall be passed. *Provided,* that the provisions of this Constitution, as to special or local laws, shall not apply to public or educational institutions of or in this State, nor to industrial, mining, immigration or manufacturing corporations or interests, or corporations for constructing canals, or improving navigable rivers or harbors of this State.

[SEC. 106.]

An Act consolidating the courts of Jefferson County was held void because of insufficient notice, the court holding that the notice should inform the people of the contents of the Bill; that it should at least contain an abstract of the Bill.—Wallace v. Jefferson Co., MSS.

It would seem that the safer plan to comply with this provision would be to publish the bill in full as a part of the notice.

SEC. 25. The General Assembly shall pass general laws, under which local and private interests shall be provided for and protected.

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is a law which applies to any political subdivision or subdivisions of the State less than the whole; a special or private law within the meaning of this article is one which applies to an individual, association or corporation.

SEC. 111. No bill introduced as a general law in either House of the Legislature shall be so amended on its passage as to become a special, private or local law.

## ARTICLE V.

### EXECUTIVE DEPARTMENT.

SEC. 112. The executive department shall consist of a Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries, and a Sheriff for each county.

SEC. 113. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama."

SEC. 114. The Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education and Commissioner of Agriculture and Industries shall be elected by the qualified electors of the State at the same time and places appointed for the election of members of the Legislature in the year nineteen hundred and two, and in every fourth year thereafter.

SEC. 115. The returns of every election for Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education and Commissioner of Agriculture and Industries shall be sealed up and transmitted by the returning officers to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the

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## ARTICLE V.

### EXECUTIVE DEPARTMENT.

SECTION 1. The executive department shall consist of a Governor, Secretary of State, State Treasurer, State Auditor, Attorney General and Superintendent of Education, and a Sheriff for each county.

SEC. 2. The supreme executive power of this State shall be vested in a chief magistrate, who shall be styled "The Governor of the State of Alabama."

SEC. 3. The Governor, Secretary of State, State Treasurer, State Auditor, and Attorney General shall be elected by the qualified electors of this State, at the same time and places appointed for the election of members of the General Assembly.

SEC. 4. The returns of every election for Governor, Secretary of State, State Auditor, State Treasurer, and Attorney General shall be sealed up and transmitted by the returning officers to the seat of government, directed to the Speaker of the House of Representatives, who shall, during the first week of the session to which said returns shall be made, open and publish them in the pres-

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[SEC. 112.]—

The power to appoint to office is not inherently executive.—Fox v. McDonald, 101 Ala., 51.

It must be authorized to exist.—*Ib.*

Nor is the power to remove from office an executive function unless made so by statute.—Nolen v. State, 118 Ala., 154.

A Sheriff cannot admit to bail except in the cases authorized.—Evans v. State, 63 Ala., 195.

Mandamus lies to compel the Governor to perform his ministerial duties.—T. & C. R. Co. v. Moore, 36 Ala., 371. Doubted in State v. Cobb, 64 Ala., 127; 138 Ala., 115; 41 Ala., 197.

*Executive Department.*

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first week of the session to which such returns shall be made, open and publish them in the presence of both Houses of the Legislature in joint convention; but the Speaker's duty and the duty of the joint convention shall be purely ministerial. The result of the election shall be ascertained and declared by the Speaker from the face of the returns without delay. The person having the highest number of votes for any one of said offices shall be declared duly elected; but if two or more persons shall have an equal and the highest number of votes for the same office, the Legislature by joint vote, without delay, shall choose one of said persons for said office. Contested elections for Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall be determined by both Houses of the Legislature in such manner as may be prescribed by law.

SEC. 116. The Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries, elected after the ratification of this Constitution, shall hold their respective offices for the term of four years from the first Monday after the second Tuesday in January next succeeding their election, and until their successors shall be elected and qualified. After the first election under this Constitution, no one of said officers shall be eligible as his own successor; and the Governor shall not be eligible to election or appointment to any office under this State, or to the Senate of the United States, during his term, and within one year after the expiration thereof.

SEC. 117. The Governor and Lieutenant Governor shall each be at least thirty years of age when elected, and shall have been citizens of the United States ten years and resident citizens of this State at least seven years next before the date of their election. The Lieutenant Gov-

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ence of both Houses of the General Assembly in joint convention. The person having the highest number of votes for either of said offices shall be declared duly elected; but if two or more shall have an equal and the highest number of votes for the same office, the General Assembly, by joint vote, without delay, shall choose one of said persons for said office. Contested elections for Governor, Secretary of State, State Auditor, State Treasurer, and Attorney General, shall be determined by both Houses of the General Assembly, in such manner as may be prescribed by law.

SEC. 5. The Governor, Secretary of State, State Treasurer, State Auditor, and Attorney General shall hold their respective offices for the term of two years from the time of their installation in office, and until their successors shall be elected and qualified.

SEC. 6. The Governor shall be at least thirty years of age when elected, and shall have been a citizen of the United States ten years, and a resident citizen of this State at least seven years next before the day of his election.

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ernor shall be *ex officio* President of the Senate, but shall have no right to vote except in the event of a tie.

SEC. 118. The Governor, Lieutenant Governor, Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall receive compensation to be fixed by law, which shall not be increased or diminished during the term for which they shall have been elected, and shall, except the Lieutenant Governor, reside at the State capital during the time they continue in office, except during epidemics. The compensation of the Lieutenant Governor shall be the same as that received by the Speaker of the House, except while serving as Governor, during which time his compensation shall be the same as that allowed the Governor.

SEC. 119. If the Legislature, at the session next after the ratification of this Constitution, shall enact a law increasing the salary of the Governor, (*a*) such increase shall become effective and apply to the first Governor elected after the ratification of this Constitution, if the Legislature shall so determine.

SEC. 120. The Governor shall take care that the laws be faithfully executed.

SEC. 121. The Governor may require information in writing, under oath, from the officers of the executive department, named in this article, or created by statute, on any subject, relating to the duties of their respective offices; and he may at any time require information in writing, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management and expenses of their respective offices and institutions. Any such officer or manager who makes a willfully false report or fails without sufficient excuse to make the required report on demand, is guilty of an impeachable offense.

SEC. 122. The Governor may, by proclamation, on extraordinary occasions, convene the Legislature at the seat of government, or at a different place if, since their last adjournment, that shall

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SEC. 7. The Governor, Secretary of State, State Treasurer, State Auditor, and Attorney General shall reside at the seat of government of this State during the time they continue in office, except in case of epidemics; and they shall receive compensation for their services, which shall be fixed by law, and which shall not be increased or diminished during the term for which they shall have been elected.

SEC. 8. The Governor shall take care that the laws be faithfully executed.

SEC. 9. The Governor may require information in writing, under oath, from the officers of the executive department, on any subject relating to the duties of their respective offices; and he may, at any time, require information in writing, under oath, from all officers and managers of State institutions, upon any subject relating to the condition, management, and expenses of their respective offices and institutions; and any such officer or manager who makes a false report, shall be guilty of perjury, and punished accordingly.

SEC. 10. The Governor may, by proclamation, on extraordinary occasions, convene the General Assembly at the seat of government, or at a different place, if, since their last adjournment, that shall

(a) Fixed at 5,000 per annum, Acts 1903, p. 32.

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have become dangerous from an enemy, insurrection, or other lawless outbreak, or from any infectious or contagious disease; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

SEC. 123. The Governor shall, from time to time, give to the Legislature information of the state of the government, and recommend for its consideration such measures as he may deem expedient; and at the commencement of each regular session of the Legislature, and at the close of his term of office, he shall give information by written message of the condition of the State; and he shall account to the Legislature, as may be prescribed by law, for all moneys received and paid out by him or by his order; and at the commencement of each regular session he shall present to the Legislature estimates of the amount of money required to be raised by taxation for all purposes.

SEC. 124. The Governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law; and, after conviction, to grant reprieves, paroles, commutations of sentence and pardons, except in cases of impeachment. The Attorney General, Secretary of State, and State Auditor shall constitute a Board of Pardons, who shall meet on the call of the Governor, and before whom shall be laid all recommendations or petitions, for pardon, commutation or parole, in cases of felony; and the Board shall hear them in open session, and give their opinion thereon in writing to the Governor, after which or on the failure of the Board to advise for more than sixty days, the Governor may grant or refuse the commutation, parole or pardon, as to him seems best for the public interest. He shall communicate to the Legislature

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have become dangerous from an enemy, or from infectious or contagious diseases; and he shall state specifically in such proclamation each matter concerning which the action of that body is deemed necessary.

SEC. 11. The Governor shall, from time to time, give to the General Assembly information of the state of the government, and recommend to their consideration such measures as he may deem expedient; and, at the commencement of each session of the General Assembly, and at the close of his term of office, give information, by written message, of the condition of the State; and he shall account to the General Assembly, as may be prescribed by law, for all moneys received and paid out by him, from any funds subject to his order, with the vouchers therefor; and he shall, at the commencement of each regular session, present to the General Assembly estimates of the amount of money required to be raised by taxation for all purposes.

SEC. 12. The Governor shall have power to remit fines and forfeitures, under such rules and regulations as may be prescribed by law, and after conviction, to grant reprieves, commutation of sentence, and pardons, except in cases of treason and impeachment; but pardons, in cases of murder, arson, burglary, rape, assault with intent to commit rape, perjury, forgery, bribery, and larceny, shall not relieve from civil and political disability, unless specifically expressed in the pardon. Upon conviction of treason, the Governor may suspend the execution of the sentence, and report the same to the General Assembly at the next regular session, when the General Assembly shall either pardon, commute the sentence, direct its execution, or grant further reprieve. He shall communicate to the General Assembly, at each regular session, each case of reprieve, commutation,

[SEC. 124.]—

Fines and forfeitures can only be remitted by the Governor.—Haley v. Clark, 26 Ala., 439.

Power confined to offenses for which there may be conviction and punishment.—M. & G. R. Co. v. Peebles, 47 Ala., 317.

Power includes power to grant conditional pardons.—Fuller v. State, 122 Ala., 22.

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at each session every remission of fines and forfeitures, and every reprieve, commutation, parole, or pardon, with his reasons therefor, and the opinion of the Board of Pardons in each case required to be referred, stating the name and crime of the convict, the sentence, its date, and the date of reprieve, commutation; parole or pardon. Pardons in cases of felony and other offenses involving moral turpitude shall not relieve from civil and political disabilities, unless approved by the Board of Pardons and specifically expressed in the pardon.

SEC. 125. Every bill which shall have passed both Houses of the Legislature, except as otherwise provided in this Constitution, shall be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the House in which it originated, which shall enter the objections at large upon the Journal and proceed to reconsider it. If the Governor's message proposes no amendment which would remove his objections to the bill, the House in which the bill originated may proceed to reconsider it, and if a majority of the whole number elected to that House vote for the passage of the bill, it shall be sent to the other House, which shall in like manner reconsider, and if a majority of the whole number elected to that House vote for the passage of the bill, the same shall become a law, notwithstanding the Governor's veto. If the Governor's message proposes amendment, which would remove his objections, the House to which it is

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or pardon granted, with his reasons therefor, stating the name and crime of the convict, the sentence, its date, and the date of the reprieve, commutation, or pardon.

SEC. 13. Every bill which shall have passed both Houses of the General Assembly, shall be presented to the Governor; if he approve, he shall sign it; but, if not, he shall return it with his objections to that House in which it shall have originated, who shall enter the objections at large upon the Journals; and the House to which such bill shall be returned shall proceed to reconsider it; if, after such reconsideration, a majority of the whole number elected to that House shall vote for the passage of such bill, it shall be sent, with the objections, to the other House, by which it shall likewise be reconsidered; if approved by a majority of the whole number elected to that House, it shall become a law; but in such case the votes of both Houses shall be determined by yeas and nays; and the names of the members voting for or against the bill shall be entered upon the Journals of each House respectively. If any bill shall not be returned by the Governor within five days (Sundays ex-

[SEC. 125.]

State Constitutions usually contain a provision requiring the Governor to approve or veto all bills or statutes which passed the Legislature. In the performance of this duty, the Governor is a member of the Legislature. The Governor's approval of a bill is not completed until the bill has passed beyond his control, and at any time prior to that he may reconsider any approval previously made.—People v. Hatch, 19 Ill., 283.

A bill signed by the Governor materially differing from the bill as passed, does not become a law.—Jones v. Hutchinson, 43 Ala., 721; Moody v. State, 48 Ala., 115; Moog v. Randolph, 77 Ala., 597; Sayre v. Pollard, 77 Ala., 608; Stein v. Leeper, 78 Ala., 517; Abernathy v. State, 78 Ala., 411.

The presumption is indulged, in the absence of proof that the bill signed by the Speaker of the House or President of the Senate and approved by the Governor, is the bill passed by the Legislature.—Ex parte Howard-Harrison Co., 119 Ala., 484.

The official connection of the Clerk of the House with the Journal ceases upon his delivery of it to the Secretary of State.—State v. Wilson, 123 Ala., 259: Mont. Co. v. Gaston, 126 Ala., 443.

A Journal, like other records, imports absolute correctness.—Mont. Co. v. Gaston, 126 Ala., 443; State v. Buckley, 54 Ala., 613.

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sent may so amend the bill and send it with the Governor's message to the other House, which may adopt, but cannot amend, said amendment; and both Houses concurring in the amendment, the bill shall again be sent to the Governor and acted on by him as other bills. If the House to which the bill is returned refuses to make such amendment, it shall proceed to reconsider it; and if a majority of the whole number elected to that House shall vote for the passage of the bill, it shall be sent with the objections to the other House, by which it shall likewise be reconsidered, and if approved by a majority of the whole number elected to that House, it shall become a law. If the House to which the bill is returned makes the amendment, and the other House declines to pass the same, that House shall proceed to reconsider it, as though the bill had originated therein, and such proceedings shall be taken thereon as above provided. In every such case the vote of both Houses shall be determined by yeas and nays, and the names of the members voting for or against the bill shall be entered upon the Journals of each House respectively. If any bill shall not be returned by the Governor within six days, Sunday excepted, after it shall have been presented, the same shall become a law in like manner as if he had signed it, unless the Legislature, by its adjournment, prevent the return, in which case it shall not be a law; but when return is prevented by recess, such bill must be returned to the House in which it originated within two days after the reassembling, otherwise it shall become a law, but bills presented to the Governor within five days before the final adjournment of the Legislature may be approved by the Governor at any time within ten days after such adjournment, and if approved and deposited with the Secretary of State within that time shall become law. Every vote, order, or resolution to which concurrence of both Houses may be necessary, except on questions of adjournment and the bringing on of elections by the two Houses,

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cepted), after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the General Assembly, by their adjournment, prevent its return, in which case it shall not be a law. And every vote, order, or resolution, to which the concurrence of both Houses may be necessary (except questions of adjournment, and of bringing on elections by the two Houses, and of amending this Constitution), shall be presented to the Governor, and, before the same shall take effect, be approved by him, or, being disapproved, shall be repassed by both Houses according to the rules and limitations prescribed in the case of a bill.

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and amending this Constitution, shall be presented to the Governor; and, before the same shall take effect, be approved by him; or, being disapproved, shall be repassed by both Houses according to the rules and limitations prescribed in the case of a bill.

SEC. 126. The Governor shall have power to approve or disapprove any item or items of any appropriation bill embracing distinct items, and the part or the parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless re-passed according to the rules and limitations prescribed for the passage of bills over the executive veto; and he shall in writing state specifically the item or items he disapproves, setting the same out in full in his message, but in such case the enroiled bill shall not be returned with the Governor's objection.

SEC. 127. In case of the Governor's removal from office, death or resignation, the Lieutenant Governor shall become Governor. If both the Governor and Lieutenant Governor be removed from office, die, or resign more than sixty days prior to the next general election, at which any State officers are to be elected, a Governor and Lieutenant Governor shall be elected at such election for the unexpired term, and in the event of a vacancy in the office, caused by the removal from office, death or resignation of the Governor and Lieutenant Governor, pending such vacancy and until their successors shall be elected and qualified, the office of Governor shall be held and administered by either the President *pro tem.* of the Senate, Speaker of the House of Representatives, Attorney General, State Auditor, Secretary of State, or State Treasurer in the order herein named. In case of the impeachment of the Governor, his absence from the State for more than twenty days, unsoundness of mind, or other disability, the power and authority of the office shall, until the Governor is acquitted, returns to the State, or is restored to his mind, or relieved from other disability,

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SEC. 14. The Governor shall have power to disapprove of any item or items of any bill making appropriations of money, embracing distinct items; and the part or parts of the bill approved shall be the law, and the item or items disapproved shall be void, unless repassed according to the rules and limitations prescribed for the passage of other bills over the executive veto; and he shall, in writing, state specifically the item or items he disapproves.

SEC. 15. In case of the impeachment of the Governor, his removal from office, death, refusal to qualify, resignation, absence from the State, or other disability, the President of the Senate shall exercise all the power and authority appertaining to the office of Governor, until the time appointed for the election of Governor shall arrive, or until the Governor who is absent, or impeached, shall return or be acquitted, or other disability be removed; and if during such vacancy in the office of Governor the President of the Senate shall be impeached, removed from office, refuse to qualify, die, resign, be absent from the State, or be under any other disability, the Speaker of the House of Representatives shall, in like manner, administer the government. If the Governor shall be absent from the State over twenty days, the Secretary of State shall notify the President of the Senate, who shall enter upon the duties of Governor; and if the Governor and President of the Senate shall both be absent from the State over twenty days, the Secretary of State shall notify the Speaker of the House of Representatives; and in such case he shall enter upon and discharge the duties of Governor, until the return

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devolve in the order herein named, upon the Lieutenant Governor, President *pro tem.* of the Senate, Speaker of the House of Representatives, Attorney General, State Auditor, Secretary of State, and State Treasurer. If any of these officers be under any of the disabilities herein specified, the office of Governor shall be administered in the order named by such of these officers as may be free from such disability. If the Governor shall be absent from the State over twenty days, the Secretary of State shall notify the Lieutenant Governor, who shall enter upon the duties of Governor; if both the Governor and Lieutenant Governor shall be absent from the State over twenty days, the Secretary of State shall notify the President *pro tem.* of the Senate, who shall enter upon the duties of Governor, and so on, in case of such absence, he shall notify each of the other officers named in their order, who shall discharge the duties of the office until the Governor or other officer entitled to administer the office in succession to the Governor returns. If the Governor-elect fail or refuse from any cause to qualify, the Lieutenant Governor-elect shall qualify and exercise the duties of Governor until the Governor-elect qualifies; and in the event both the Governor-elect and the Lieutenant Governor-elect from any cause fail to qualify, the President *pro tem.* of the Senate, the Speaker of the House of Representatives, the Attorney General, State Auditor, Secretary of State, and State Treasurer shall in like manner, in the order named, administer the office, until the Governor-elect or Lieutenant Governor-elect qualifies.

SEC. 128. If the Governor or other officer administering the office shall appear to be of unsound mind, it shall be the duty of the Supreme Court of Alabama, at any regular term, or at any special term, which it is hereby authorized to call for that purpose, upon request in writing, verified by their affidavits, of any two of the officers named in Section 127 of this Constitution, not

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of the Governor or President of the Senate.

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next in succession to the office of Governor, to ascertain the mental condition of the Governor or other officer administering the office, and if he is adjudged to be of unsound mind, to so decree, a copy of which decree, duly certified, shall be filed in the office of the Secretary of State; and in the event of such adjudication, it shall be the duty of the officer next in succession to perform the duties of the office until the Governor or other officer administering the office is restored to his mind. If the incumbent denies that the Governor or other person entitled to administer the office has been restored to his mind, the Supreme Court, at the instance of any officer named in Section 127 of this Constitution, shall ascertain the truth concerning the same, and if the officer has been restored to his mind, shall so adjudge and file a duly certified copy of its decree with the Secretary of State; and in the event of such adjudication, the office shall be restored to him. The Supreme Court shall prescribe the method of taking testimony and the rules of practice in such proceedings, which rules shall include a provision for the service of notice of such proceedings on the Governor or person acting as Governor.

SEC. 129. The Lieutenant Governor, President *pro tem.* of the Senate, Speaker of the House, Attorney General, State Auditor, Secretary of State, or State Treasurer, while administering the office of Governor, shall receive like compensation as that prescribed by law for the Governor, and no other.

SEC. 130. No person shall, at the same time hold the office of Governor and any other office, civil or military, under this State, or the United States, or any other State or government, except as otherwise provided in this Constitution.

SEC. 131. The Governor shall be commander in chief of the militia and volun-

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SEC. 16. The President of the Senate and Speaker of the House of Representatives shall, during the time they respectively administer the government, receive the same compensation which the Governor would have received if he had been employed in the duties of his office. *Provided,* that if the General Assembly shall be in session during such absence, they, or either of them, shall receive no compensation as members of the General Assembly while acting as Governor.

SEC. 17. No person shall, at one and the same time, hold the office of Governor of this State and any other office, civil or military, either under this State, the United States, or any other State or government, except as otherwise provided in this Constitution.

SEC. 18. The Governor shall be commander-in-chief of the militia and volun-

*Executive Department.*

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teer forces of this State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws, suppress insurrection and repel invasion, but need not command in person unless directed to do so by resolution of the Legislature; and when acting in the service of the United States, he shall appoint his staff, and the Legislature shall fix his rank.

SEC. 132. No person shall be eligible to the office of Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, or Commissioner of Agriculture and Industries unless he shall have been a citizen of the United States at least seven years, and shall have resided in this State at least five years next preceding his election, and shall be at least twenty-five years old when elected.

SEC. 133. There shall be a seal of the State, which shall be used officially by the Governor, and the seal now in use shall continue to be used until another shall have been adopted by the Legislature. The seal shall be called "The Great Seal of the State of Alabama."

SEC. 134. The Secretary of State shall be the custodian of the Great Seal of the State, and shall authenticate therewith all official acts of the Governor, except his approval of laws, resolutions, appointments to office, and administrative orders. He shall keep a register of the official acts of the Governor, and when necessary, shall attest them, and lay copies of same together with copies of all papers relative thereto, before either House of the Legislature, when required to do so, and shall perform such other duties as may be prescribed by law.

SEC. 135. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the Great Seal of the State, signed by the Governor and countersigned by the Secretary of State.

SEC. 136. Should the office of Attorney General, State Auditor, Secretary of

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teer forces of this State, except when they shall be called into the service of the United States, and he may call out the same to execute the laws, suppress insurrection, and repel invasion; but he need not command in person unless directed to do so by a resolution of the General Assembly; and when acting in the service of the United States he shall appoint his staff, and the General Assembly shall fix his rank.

SEC. 19. No person shall be eligible to the office of Secretary of State, State Treasurer, State Auditor, or Attorney General, unless he shall have been a citizen of the United States at least seven years, and shall have resided in this State at least five years next preceding his election, and shall be at least twenty-five years old when elected.

SEC. 20. There shall be a great seal of the State, which shall be used officially by the Governor; and the seal now in use shall continue to be used until another shall have been adopted by the General Assembly. The said seal shall be called the "Great Seal of the State of Alabama."

SEC. 21. The Secretary of State shall be the custodian of the seal of the State, and shall authenticate therewith all official acts of the Governor, his approval of laws and resolutions excepted. He shall keep a register of the official acts of the Governor, and when necessary, shall attest them, and lay copies of the same, together with copies of all papers relative thereto, before either House of the General Assembly, when required to do so, and shall perform such other duties as may be prescribed by law.

SEC. 22. All grants and commissions shall be issued in the name and by the authority of the State of Alabama, sealed with the great seal, and signed by the Governor, and countersigned by the Secretary of State.

SEC. 23. Should the office of Secretary of State, State Treasurer, State Auditor,

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State, State Treasurer, Superintendent of Education, or Commissioner of Agriculture and Industries become vacant from any cause, the Governor shall fill such vacancy until the disability is removed or a successor elected and qualified. In case any of said officers shall become of unsound mind, such unsoundness shall be ascertained by the Supreme Court upon the suggestion of the Governor.

SEC. 137. The Attorney General, State Auditor, Secretary of State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries shall perform such duties as may be prescribed by law. The State Treasurer and State Auditor shall, every year, at a time fixed by the Legislature, make a full and complete report to the Governor, showing the receipts and disbursements of every character, all claims audited and paid out, by items, and all taxes and revenues collected and paid into the treasury, and the sources thereof. They shall make reports oftener upon any matters pertaining to their offices, if required by the Governor or the Legislature. The Attorney General, State Auditor, Secretary of State, State Treasurer, and Commissioner of Agriculture and Industries shall not receive to their use any fees, costs, perquisites of office or other compensation than the salaries prescribed by law, and all fees that may be payable for any services performed by such officers shall be at once paid into the State Treasury.

SEC. 138. A Sheriff shall be elected in each county by the qualified electors thereof, who shall hold office for a term of four years, unless sooner removed, and he shall be ineligible to such office as his own successor; provided, that the terms of all Sheriffs expiring in the year nineteen hundred and four are

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Attorney General, or Superintendent of Education become vacant for any cause specified in Section Fifteen of this Article, the Governor shall fill the vacancy, until the disability is removed, or a successor elected and qualified.

SEC. 24. The State Treasurer, State Auditor, and Attorney General shall perform such duties as may be prescribed by law. The State Treasurer and State Auditor shall, every year, at a time the General Assembly may fix, make a full and complete report to the Governor, showing all receipts and disbursements of revenue of every character, all claims audited and paid by the State, by items, and all taxes and revenue collected and paid into the treasury, and from what sources; and they shall make reports oftener on any matter pertaining to their office, if required to do so by the Governor or the General Assembly.

SEC. 25. The State Auditor, State Treasurer and Secretary of State shall not, after the expiration of the terms of those now in office, receive to their use any fees, costs, perquisites of office, or compensation, other than their salaries as prescribed by law; and all fees that may be payable by law, for any services performed by either of such officers, shall be paid in advance into the State treasury.

SEC. 26. A Sheriff shall be elected in each county, by the qualified electors thereof, who shall hold his office for the term of four years, unless sooner removed, and shall be ineligible to such office as his own successor. *Provided,* that Sheriffs elected on the first Monday in August, 1877, or at such other time as

[SEC. 138.]—

Provision does not apply to Sheriff appointed to fill fractional term, and he may succeed himself.—Black v. Pate, 130 Ala., 514.

A person appointed by the Governor to fill an unexpired term in the office of Sheriff can hold office only for the unexpired term and until the successor is elected and qualified.—Dowling v. White, 116 Ala., 306.

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hereby extended until the time of the expiration of the terms of the other executive officers of this State in the year nineteen hundred and seven, unless sooner removed. Whenever any prisoner is taken from jail, or from the custody of any Sheriff or his deputy, and put to death, or suffers grievous bodily harm, owing to the neglect, connivance, cowardice or other grave fault of the Sheriff, such Sheriff may be impeached under Section 174 of this Constitution. If the Sheriff be impeached, and thereupon convicted, he shall not be eligible to hold any office in this State during the time for which he had been elected or appointed to serve as Sheriff.

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may be prescribed by law for the election in that year, shall hold their offices for the term of three years, and until their successors shall be elected and qualified. In the year 1880, at the general election for members to the General Assembly, Sheriffs shall be elected for four years as herein provided. Vacancies in the office of Sheriff shall be filled by the Governor, as in other cases; and the person appointed shall continue in office until the next general election in the county for Sheriff, as provided by law.

## ARTICLE VI.

### JUDICIAL DEPARTMENT.

SECTION 139. The judicial power of the State shall be vested in the Senate sitting as a court of impeachment, a Supreme Court, Circuit Courts, Chancery

## ARTICLE VI.

### JUDICIAL DEPARTMENT.

SECTION 1. The judicial power of the State shall be vested in the Senate sitting as a Court of Impeachment, a Supreme Court, Circuit Courts, Chancery Courts,

[SEC. 139.]—

The legislative and judicial departments of the Government are co-ordinate branches of equal dignity; each is supreme in the exercise of its respective functions, and is not within the control or supervision of the other, and no power is given one to revise the actions of the other when the other has acted within its proper sphere and in performance of its legitimate functions. Courts, in some cases, declare legislative enactments unconstitutional and void, but it is not because the judicial power is above the legislative; the courts do not revise legislative actions, but construe and enforce them. When the courts declare a legislative act void, it is because the act is forbidden by the Constitution, either expressly or impliedly, and because the Constitution is the law of the people or is paramount to the will of the legislators as to that matter which is held void. Courts, in declaring statutes void, do no more than private citizens in respect to the mandates of courts when the judges assume to render judgment without their jurisdiction. Courts cannot decline to declare a law unconstitutional if it be forbidden by the Constitution, and if the law of the people which is therein declared is in conflict with that expressed by the legislators. Courts cannot declare a law unconstitutional, but they declare acts and statutes unconstituional for the reason that they are not law and cannot be made the law, because the higher law forbids the enactment of a given statute. This authority or power of the courts has been denied by many eminent jurists in the formative period of our laws, and is yet denied by some, though it is now generally agreed that it is not only within the power and authority of the court so to do, but that it is the duty of the court to so declare void and unconstitutional acts, but the court will not declare a law void unless it becomes necessary to the determination of a pending case; it will not draw in such question collaterally; the question must be the very *lis moda*, such that the decision of the question is unavoidable.—Cooley Const. Lim., 196; Smith v. Speed, 50 Ala., 276; Mobile Co. v. State, 29 Ala., 573.

Whenever the court attempts to substitute its judgment for that of the Legislature, where the Constitution authorizes the Legislature to exercise judgment, the court then enters upon a field where it is impossible to set limits, and where its discretion is the only limitation to the extent of its interference. Courts are no more guardians of the rights of the people than are the legislators; an appeal from unjust and oppressive legislation should be made to the Legislature, and not to the court. Courts can know nothing of public policy except from the Constitution and the statutes. Courts have no legislative powers; they cannot amend or modify statutes, or examine questions of ex-

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Courts, Courts of Probate, such courts of law and equity inferior to the Supreme Court, and to consist of not

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Courts of Probate, such inferior courts of law and equity, to consist of not more than five members, as the General Assem-

pediency, whether they are politic or impolitic. —License cases, 5 Wall., 462, 469; Smith v. Macon, 20 Ark., 17.

Courts cannot declare statutes void because opposed to the spirit but not to the expressed or implied words of the Constitution. The American Constitution is a written Constitution, and courts should know nothing of its spirit other than that which is expressed or implied by its words. There are many dicta and some reputed authorities in the reports of the decisions of the highest courts in the land, declaring acts contrary to the spirit of the Constitution, though not to the expressed or implied provisions, and contrary to the first great principles of right; this is good reason for the Legislature to refuse to pass the statute; but it is certainly no ground for the court to declare the act void; in such cases the court loses sight of its authority and functions and it becomes an appellate legislature rather than an appellate court.—Cooley Const. Lim., 205; People v. Fisher, 24 Wend., 215.

"So long as our judiciary remains fearless and firm in the discharge of its duties, corrupt and popular leaders, those who pine for public favor and hope for political advancement, cannot oppress the people, and if the liberties of the American people are ever destroyed it will be when public opinion shall lose confidence and respect for the integrity, honor and justice of the judiciary; when conspirators shall be bold enough and the misguided impulse of party spirit strong enough, or the visionary legislators and watchful leaders strong enough to corrupt the judges; then will the judiciary be brought into public odium, and then will be moved the last barrier between the public liberty and monarchal despotism."—Story on Jurisprudence.

The courts named are constitutional and cannot be abolished by Legislature; inferior courts are statutory, may be abolished and term and salary of Judge ends with the court. —Perkins v. Corbin, 45 Ala., 103; Ex parte Roundtree, 51 Ala., 42.

An inferior court is one whose judgments can be reviewed by a higher tribunal, the Circuit or Supreme Court.—Nugent v. State, 18 Ala., 521; Perkins v. Corbin, 45 Ala., 103; Ex parte Roundtree, 51 Ala., 42; Sanders v. State, 55 Ala., 42.

Competent to divide a Circuit Court into two divisions, each sitting in a different part of the county.—Lowery v. State, 103 Ala., 50; Triest v. Enslen, 106 Ala., 180.

Circuit Courts are permanent courts. Necessities of the judicial system and cannot be destroyed by statute.—State v. Sayre, 118 Ala., 1.

If the Legislature never exercised the power to establish inferior courts, the whole judicial sovereignty would reside in the courts of constitutional origin.—State v. Sayre, 118 Ala., 1; Perkins v. Corbin, 45 Ala., 118.

The judicial system is one in and of itself, complete.—State v. Sayre, 118 Ala., 1.

It is within legislative power to confer judicial power upon ministerial or executive officers.—State ex rel. Winter v. Sayre, 118 Ala., 1; Gaines v. Harvin, 19 Ala., 491; Ex parte Roundtree, 51 Ala., 42.

The intrinsic body of judicial power is lodged by the Constitution in the courts of its own creation.—State v. Sayre, 118 Ala., 1.

An inferior court is of legislative creation and it is only as such that it has constitutional recognition. It is, therefore, distinguished from courts of constitutional origin.—State v. Sayre, 118 Ala., 1.

The Constitution does not inhibit retrospective legislation, yet it does not authorize expository statutes; to declare what the law is, is a judicial power; to declare what the law shall be, is legislative.—Lindsay v. U. S. Co., 120 Ala., 156.

The Legislature has no authority to direct the judiciary how to interpret the law—Lindsay v. U. S. Co., 120 Ala., 156; Carlton v. Goodwin, 41 Ala., 153; Ins. Co. v. Boykin, 38 Ala., 110.

When the inquiry relates to the legality of a court involving its power to act, it is unnecessary to first object to its exercise of jurisdiction, but if the objection relates to its power to act in a specific case, it must first be adjudicated in that court before a writ of prohibition can issue.—Hill v. Tarver, 130 Ala., 592.

Courts have nothing to do with the justice, wisdom, policy or expediency of the law.—Mobile v. Yuille, 3 Ala., 137.

The courts cannot inquire into the reason of executive in making appointments, or of the Legislature in enacting law.—State v. Adams, 2 Stew., 231; State v. Paul, 5 S. & P., 40.

It is only those duties which are inherently not judicial functions which the judiciary are prohibited, by the Constitution, from performing; some duties, though of an executive character, if not inherently so, may be performed by the judiciary.—Fox v. McDonald, 101 Ala., 51.

Whether a law is a wise or judicious exercise of the legislative power is not the concern of the courts, that is a question for the Legislature.—Sheppard v. Dowling, 127 Ala., 13.

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more than five members, as the Legislature from time to time may establish, and such persons as may be by law invested with powers of a judicial nature; but no court of general jurisdiction, at law or in equity, or both, shall hereafter be established in and for any one county having a population of less than twenty thousand, according to the next preceding Federal census, and property assessed for taxation at a less valuation than three million five hundred thousand dollars.

SEC. 140. Except in cases otherwise directed in this Constitution, the Supreme Court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law, except where jurisdiction over appeals is vested in

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bly may from time to time establish, and such persons as may be by law invested with powers of a judicial nature.

SEC. 2. Except in cases otherwise directed in the Constitution, the Supreme Court shall have appellate jurisdiction only, which shall be coextensive with the State, under such restrictions and regulations, not repugnant to this Constitution, as may from time to time be prescribed by law; *Provided,* that said court shall have power to issue writs of injunc-

[SEC. 140.]—

The Supreme Court has only appellate jurisdiction with exceptions named.—State v. Flinn, Minor 8; Johnston v. Atwood, 2 Stew., 225.

Rendition of judgment against sureties on an appeal bond is not assuming original jurisdiction.—Johnston v. Atwood, 2 Stew., 225.

Legislature can control appellate, but not original jurisdiction; the latter being constitutional.—Thompson v. Lea, 28 Ala., 453; Ex parte Bibb, 44 Ala., 140; Ex parte Candee, 48 Ala., 386.

Some courts hold that the Supreme Court will not issue extraordinary writs until the party complaining shall have sought redress in the inferior court, though our court is not committed on that proposition, but it is committed that it will not issue prohibition against an inferior court when no objection was made in the court sought to be probihited.—Hill v. Tarver, 130 Ala., 576; Ex parte Green & Graham, 29 Ala., 58; see Ex parte Hamilton, 51 Ala., 62, and Ex parte Edwards, 123 Ala., 102.

The power of the Supreme Court to grant an original application for mandamus is confined to those cases in which no other court has jurisdiction; Probate Courts are subject to mandamus from the Circuit or City Courts, consequently the Supreme Court cannot, in the first instance, issue mandamus against Probate Court.—Christopher v. Stewart, 133 Ala., 352; State v. Hewlett, 124 Ala., 471.

Jurisdiction is in general, revisory, and application must be first refused by inferior court; but Supreme Court may first award either of the designated writs.—Davis v. Tuscumbia R. Co., 4 S. & P., 421; State v. Paul, 5 S. & P., 40; Ex parte Simonton, 9 Port., 383; State v. Porter, 1 Ala., 688; John v. State, 1 Ala., 95; Ex parte Mansony, 1 Ala., 98; State v. Williams, 1 Ala., 342; Ex parte Tarleton, 2 Ala., 36; Ex parte Chaney, 8 Ala., 424; Ex parte Smith, 23 Ala., 94; Ex parte City Council, 24 Ala., 98; Ex parte Henry, 24 Ala., 638; Ex parte Pickett, 24 Ala., 91; Ex parte Burnett, 30 Ala., 461; Thompson v. Lea, 28 Ala., 453; Ex parte Floyd, 40 Ala., 116; Ex parte Henderson, 43 Ala., 392; Ex parte Bibb, 44 Ala., 140; Ex parte Candee, 48 Ala., 386; Ex parte Jones, 94 Ala., 33.

Will award original mandamus to compel the Speaker to certify to the pay of a Legislator.—Ex parte Pickett, 24 Ala., 91.

When may issue writ of prohibition.—Ex parte Smith, 23 Ala., 94; Ex parte Walker, 25 Ala., 81; Ex parte Green, 29 Ala., 52; Ex parte Russell, 29 Ala., 717; Ex parte Roundtree, 51 Ala., 42.

Supreme Court has no jurisdiction to award mandamus to compel Board of Registrars to register a voter.—Ex parte Giles, 132 Ala., 211.

A Board of Registrars is not one of the jurisdictions which the Supreme Court may control by original writs.—*Ib.*

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some inferior court, and made final therein; provided, that the Supreme Court shall have power to issue writs of injunction, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

SEC. 141. The Supreme Court shall be held at the seat of government, but if that shall become dangerous from any cause, it may convene at or adjourn to another place.

SEC. 142. Except as otherwise authorized in this article, the State shall be divided into convenient circuits. For each circuit there shall be chosen a Judge, who shall, for one year next preceding his election and during his continuance in office, reside in the circuit for which he is elected.

SEC. 143. The Circuit Court shall have original jurisdiction in all matters civil and criminal within the State not otherwise excepted in this Constitution; but in civil cases, other than suits for libel, slander, assault and battery, and ejectment, it shall have no original jurisdiction except where the matter or sum in controversy exceeds fifty dollars.

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tion, habeas corpus, quo warranto, and such other remedial and original writs as may be necessary to give it a general superintendence and control of inferior jurisdictions.

SEC. 3. The Supreme Court shall be held at the seat of government, but if that shall become dangerous from any cause, it may adjourn to a different place.

SEC. 4. The State shall be divided by the General Assembly into convenient circuits, not to exceed eight in number, unless increased by a vote of two-thirds of the members of each House of the General Assembly, and no circuit shall contain less than three nor more than twelve counties; and for each circuit there shall be chosen a judge, who shall, for one year next preceding his election, and during his continuance in office, reside in the circuit for which he is elected.

SEC. 5. The Circuit Court shall have original jurisdiction in all matters, civil and criminal, within the State, not otherwise excepted in this Constitution; but in civil cases only when the matter or sum in controversy exceeds fifty dollars.

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[SEC. 141.]—

State v. Tally, 102 Ala., 25, 33.

[SEC. 142.]—

Within prescribed limits Circuits may be changed at will.—Ex parte Lusk, 82 Ala., 519.

[SEC. 143.]—

Original jurisdiction is constitutional and does not require legislation to effectuate it; appellate is statutory and limited.—Carew v. Lillienthall, 50 Ala., 44; Dunbar v. Frazer, 78 Ala., 529.

Has no Chancery jurisdiction except power to issue injunctions.—Nugent v. State, 18 Ala., 521.

Two-thirds of the members of each House construed by Senate to mean two-thirds of each House present and voting.—Journal 1892-93, pp. 708-710.

Summary proceedings against public officer for dereliction of duty is not a "civil cause" within this section.—Huggins v. Ball, 19 Ala., 587; Nowlin v. McCalley, 31 Ala., 678.

If complaint shows cause of action for only a nominal sum, court has no jurisdiction.—Cahuzac v. Samini, 29 Ala., 288.

If debt is increased to more than fifty dollars, although by interest, court has jurisdiction.—Hogan v. Odam, 3 Stew., 59; Hargrove v. Smith, 1 Ala., 80.

Between fifty and one hundred dollars the jurisdiction is concurrent with Justices of the Peace.—Carew v. Lillienthall, 50 Ala., 44; K. C. M. & B. R. Co. v. Whitehead, 109 Ala., 495.

The amount in controversy is the amount claimed by the plaintiff, and not the amount of the recovery.—Haws v. Morgan, 59 Ala., 508; M. & C. R. Co. v. Hembree, 84 Ala., 182; Camp v. Marion Co., 91 Ala., 240.

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SEC. 144. A Circuit Court, or a court having the jurisdiction of the Circuit Court, shall be held in each county in the State at least twice in every year, and Judges of the several courts mentioned in this section may hold court for each other when they deem it expedient, and shall do so when directed by law. The judges of the several courts mentioned in this section shall have power to issue writs of injunction, returnable to the Courts of Chancery, or courts having the jurisdiction of Courts of Chancery.

SEC. 145. The Legislature shall have power to establish a Court or Courts of Chancery, with original and appellate jurisdiction, except as otherwise authorized in this article. The State shall be divided by the Legislature into convenient Chancery Divisions; each division shall be divided into districts, and for each division there shall be a Chancellor, who shall have resided in the division for which he shall be elected or appointed, for one year next preceding his election or appointment, and shall reside therein during his continuance in office.

SEC. 146. A Chancery Court, or a court having the jurisdiction of the Chancery Court, shall be held in each district, at a place to be fixed by law, at least twice in each year, and the Chancellors may hold court for each other when they deem it necessary, and shall do so when directed by law.

SEC. 147. Any county having a population of twenty thousand or more, according to the next preceding Federal census, and also taxable property of

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SEC. 6. A Circuit Court shall be held in each county in the State at least twice in every year, and the judges of the several circuits may hold courts for each other, when they deem it expedient, and shall do so when directed by law; *Provided* that the judges of the several circuit Courts shall have power to issue writs of injunction returnable into Courts of Chancery.

SEC. 7. The General Assembly shall have power to establish a Court or Courts of Chancery, with original and appellate jurisdiction. The State shall be divided by the General Assembly into convenient chancery divisions, not exceeding three in number, unless an increase shall be made by a vote of two-thirds of each House of the General Assembly, taken by yeas and nays and entered upon the journals; and the divisions shall be divided into districts; and for each division there shall be a Chancellor, who shall, at the time of his election or appointment, and during his continuance in office, reside in the division for which he shall have been elected or appointed.

SEC. 8. A Chancery Court shall be held in each district, at a place to be fixed by law, at least once in each year; and the Chancellors may hold courts for each other, when they deem it necessary.

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[SEC. 146.]—

Nugent v. State, 18 Ala. 521.

Chancery Court has jurisdiction of civil matters as at common law.—State v. Sayre, 118 Ala., 1.

It is a mistake to suppose because there is no effectual remedy at law there must be one in equity; no court of chancery will attempt to supply defects of law by deciding contrary to its settled rules beyond the already settled principles of equity jurisprudence, but wherever there exists a legal right and there is no remedy, or an imperfect one is given at law, Chancery interferes and provides a remedy so long as the right exists.—Henderson v. Hall, 134 Ala., 455.

Local jurisdiction or venue may be waived.—94 Ala., 303; 106 Ala., 615.

Does not confine the venue to county of defendant's residence or in which the property is located.—Fulmore v. Brady, 44 Ala., 218; Reeves v. Brown, 103 Ala., 537.

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three million five hundred thousand dollars or more in value, according to the next preceding assessment of property for State and county taxation, need not be included in any Circuit or Chancery Division; but if the value of its taxable property shall be reduced below that limit, or if its population shall be reduced below that number, the Legislature shall include such county in a Circuit and Chancery Division, or either, embracing more than one county. No Circuit or Chancery Division shall contain less than three counties, unless there be embraced therein a county having a population of twenty thousand or more, and taxable property of three million five hundred thousand dollars or more in value.

SEC. 148. The Legislature may confer upon the Circuit Court or the Chancery Court the jurisdiction of both of said courts. In counties having two or more courts of record, the Legislature may provide for the consolidation of all or any such courts of record, except the Probate Court, with or without separate divisions, and a sufficient number of Judges for the transaction of the business of such consolidated court.

SEC. 149. The Legislature shall have power to establish in each county a court of probate, with general jurisdiction of orphan's business and with power to grant letters testamentary and of administration; provided, that whenever any court having equity powers has taken jurisdiction of the settlement of any es-

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SEC. 9. The General Assembly shall have power to establish in each county within the State a Court of Probate, with general jurisdiction for the granting of letters testamentary and of administration, and for orphans' business.

[SEC. 149.]—

A specific grant of unrestricted and general jurisdiction over the granting of letters testamentary and of administration and for orphans' business.—Ikelheimer v. Chapman, 32 Ala., 676; Gray v. Cruise, 36 Ala., 559; Coltart v. Allen, 40 Ala., 155; Balkum v. State, 40 Ala., 671; Carswell v. Spencer, 44 Ala., 204; Hall v. Hall, 47 Ala., 290; Wright v. Ware, 50 Ala., 549; Bean v. Chapman, 62 Ala., 58; Sims v. Waters, 65 Ala., 442; Hatchett v. Billingslea, 65 Ala., 16; Steele v. Tutwiler 68 Ala., 107; Landford v. Dunklin, 71 Ala., 594; Morgan v. Casey, 73 Ala., 222; Barclift v. Treece, 77 Ala., 528.

But there is a class of cases involving testamentary trusts and powers of which the Probate Court has not jurisdiction.—Ex parte Dickson, 64 Ala., 188; Penny v. Werborn, 72 Ala., 58; Foxworth v. White, 72 Ala., 224; Hinson v. Williamson, 74 Ala., 180; Creamer v. Holbrook, 99 Ala., 52.

Power of Chancery Court to appoint administrator ad litem.—Malone v. Hill, 60 Ala., 225.

No prohibition against conferring on Probate Courts judicial cognizance of matters also within the jurisdiction of other courts.—Balkum v. State, 40 Ala., 671; Randolph v. Baldwin, 41 Ala., 305.

The office of Probate Judge is the creature of statute under which it exists, and by which its character is defined.—Thompson v. Holt, 52 Ala., 491.

Authority to appoint special administrators in cases requiring such is included in the power conferred upon Probate Courts.—Breeding v. Breeding 128 Ala., 412.

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tate, it shall have power to do all things necessary for the settlement of such estate, including the appointment and removal of administrators, executors, guardians and trustees, and including action upon the resignation of either of them.

SEC. 150. The Justices of the Supreme Court, Chancellors, and the Judges of the Circuit Courts and other courts of record, except Probate Courts, shall, at stated times, receive for their services a compensation which shall not be diminished during their official terms; they shall receive no fees or perquisites, nor hold any office, except judicial offices, of profit or trust under this State or the United States, or any other government, during the term for which they have been elected or appointed.

SEC. 151. The Supreme Court shall consist of one Chief Justice and such number of Associate Justices as may be prescribed by law.

SEC. 152. The Chief Justice and Associate Justices of the Supreme Court, Judges of the Circuit Courts, Judges of Probate Courts, and Chancellors shall be elected by the qualified electors of the State, Circuits, Counties and Chancery Divisions, for which such courts may be established, at such times as may be prescribed at law, except as herein otherwise provided.

SEC. 153. The Judges of such inferior courts of law and equity as may be by law established, shall be elected or ap-

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SEC. 10. The Judges of the Supreme Court, Circuit Courts, and Chancellors shall, at stated times, receive for their services a compensation which shall not be diminished during their official terms; but they shall receive no fees or perquisites, nor hold any office (except judicial offices) of profit or trust under this State or the United States, or any other power, during the term for which they have been elected.

SEC. 11. The Supreme Court shall consist of one Chief Justice and such number of Associate Justices as may be prescribed by law.

SEC. 12. The Chief Justice and Associate Justices of the Supreme Court, Judges of the Circuit Courts, and Chancellors shall be elected by the qualified electors of the State, circuits, counties, and chancery divisions, for which such courts may be established, at such times as may be prescribed by law.

SEC. 13. The Judges of such Inferior Courts of law and equity as may be by law established, shall be elected or ap-

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[Sec. 10, Art. VI., 1875.]—

Protection extended only to Judges of the Supreme and Circuit Courts and Chancellors; not to Judges of inferior statutory courts.—Perkins v. Corbin, 45 Ala., 103; Ex parte Roundtree, 51 Ala., 42; Ex parte Amos, 51 Ala., 57. (Sec. 150 of 1901 extends it.)

A fixed term and compensation is deemed essential to preserve the independence of the judiciary created by the Constitution.—State v. Sayre, 118 Ala., 1.

The Judges of the Supreme, Circuit, Chancery and Probate Courts are protected from legislative invasion.—State v. Sayre, 118 Ala., 1.

A reduction of the salary of a Judge on account of his absence when ill.—White v. State, ex rel., Denson, 123 Ala., 577.

[Sec. 152.]—

Legislature cannot make the Judge of the Circuit Court, in whose circuit an inferior court is established, the Judge thereof.—Ex parte Roundtree, 51 Ala., 42.

The office of Probate Judge is statutory; a bond may be required of him for the faithful performance of ministerial duties.—Thompson v. Holt, 52 Ala., 491.

[Sec. 153.]—

County Courts may be established, of which the Judge of Probate is ex-officio Judge.—Balkum v. State, 40 Ala., 671; Randolph v. Baldwin, 41 Ala., 305.

City Courts of which the Judges may be elected or appointed, and the court and office abolished at will.—Perkins v. Corbin, 45 Ala., 103.

And jurisdiction of Circuit Court may be conferred upon Judge of Probate.—Moore v. State, 68 Ala., 360.

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pointed in such mode as the Legislature may prescribe.

SEC. 154. Chancellors and Judges of all courts of record, shall have been citizens of the United States and of this State for five years next preceding their election or appointment, and shall be not less than twenty-five years of age, and, except Judges of Probate Courts, shall be learned in the law.

SEC. 155. Except as otherwise provided in this article, the Chief Justice and Associate Justices of the Supreme Court, Circuit Judges, Chancellors, and Judges of Probate, shall hold office for the term of six years, and until their successors are elected or appointed, and qualified; and the right of such Judges and Chancellors to hold their offices for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit, division or county, or in the mode or time of election.

SEC. 156. The Chief Justice and Associate Justices of the Supreme Court shall be chosen at an election to be held at the time and places fixed by law for the election of members of the House of Representatives of the Congress of the United States, until the Legislature shall by law change the time of holding such election. The term of office of the Chief Justice, who shall be elected in the year nineteen hundred and four, shall be as provided in the last preceding section. The successors of two of the Associate Justices elected in the year nineteen hundred and four shall be elected in the year nineteen hundred and six, and the successors of the other two Associate Justices elected in nineteen hundred and four, shall be elected in the year nineteen hundred and eight. The Associate Justices of said court elected in the year nineteen hundred and four shall draw or cast lots among themselves to determine which of them shall hold office for the terms ending, respectively, in the years nineteen hundred and six and nineteen hundred and eight, and until their respective successors are elected or appointed and qualified. The result of

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pointed in such mode as the General Assembly may prescribe.

SEC. 14. The Judges of the Supreme Court, Circuit Courts, and Chancellors, and the Judges of City Courts shall have been citizens of the United States and of this State for five years next preceding their election or appointment, and shall be not less than twenty-five years of age, and learned in law.

SEC. 15. The Chief Justice and Associate Justices of the Supreme Court, Circuit Judges, Chancellors, and Probate Judges shall hold office for the term of six years, and until their successors are elected or appointed and qualified; and the right of such Judges and Chancellors to hold their offices for the full term hereby prescribed shall not be affected by any change hereafter made by law in any circuit, division, or county in the mode or time of election.

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such determination shall be certified to the Governor, by such Associate Justices, or a majority of them, prior to the first day of January, nineteen hundred and five, and such certificate shall be entered upon the minutes of the court. In the event of the failure of said Associate Justices to make and certify such determination, the Governor shall designate the terms for which they shall respectively hold office, as above provided, and shall issue his proclamation accordingly. In the event of an increase or reduction by law of the number of Associate Justices of the Supreme Court, the Legislature shall, as nearly as may be, provide for the election, each second year, of one-third of the members of said court.

SEC. 157. All judicial officers within their respective jurisdictions shall, by virtue of their offices, be conservators of the peace.

SEC. 158. Vacancies in the office of any of the Justices of the Supreme Court or Judges who hold office by election, or Chancellors of this State, shall be filled by appointment by the Governor. The appointee shall hold his office until the next general election for any State officer held at least six months after the vacancy occurs, and until his successor is elected and qualified; the successor chosen at such election shall hold office for the unexpired term and until his successor is elected and qualified.

SEC. 159. Whenever any new Circuit or Chancery Division is created the Judge

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SEC. 16. The Judges of the Supreme Court shall, by virtue of their offices, be conservators of the peace throughout the State; the Judges of the Circuit Courts, within their respective circuits, and the Judges of the Inferior Courts, within their respective jurisdictions, shall, in like manner, be conservators of the peace.

SEC. 17. Vacancies in the office of any of the Judges or Chancellors of this State shall be filled by appointment by the Governor; and such appointee shall hold his office for the unexpired term, and until his successor is elected or appointed and qualified.

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[Sec. 17, Art. VI., 1875.]—

The Constitution and Legislature create two classes of public offices and officers.—State v. Sayre, 118 Ala., 1; Ex parte Wiley, 54 Ala., 226.

This provision of the Constitution does not apply to Judge of inferior courts.—State v. Sayre, 118 Ala., 1.

The granting of this unlimited power of elections or appointment of Judges of inferior courts confers every necessary power to make the grant effectual.—State v. Sayre, 118 Ala., 1.

Judges of inferior courts are distinguished from Judges of constitutional courts so far as to terms of office, mode of election or appointment or filling vacancies; statutes control this. As to this, the power of the Legislature is plenary and not under control of the Constitution.—Winter v. Sayre, 118 Ala., 1.

The Legislature may prescribe the terms of office for Judges of inferior courts, prescribe the mode of appointment or election, and when the terms shall begin and end.—Winter v. Sayre, 118 Ala., 1; Coleman and Head, J. J., dissenting.

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or Chancellor therefor shall be elected at the next general election for any State officer for a term to expire at the next general election for Circuit Judge and Chancellors; provided, that if said new Circuit or Chancery Division is created more than six months before such general election for any State officer, the Governor shall appoint some one as Judge or Chancellor, as the case may be, to hold the office until such election.

SEC. 160. If in any case, civil or criminal, pending in any Circuit Court, Chancery Court, or in any court of general jurisdiction having any part of the jurisdiction of a Circuit and a Chancery Court, or either of them in this State, the presiding Judge or Chancellor shall, for any legal cause, be incompetent to try, hear or render judgment in such case, the parties, or their attorneys of record, if it be a civil case, or the solicitor or prosecuting officer, and the defendant or defendants, if it be a criminal case, may agree upon some disinterested person practicing in the court and learned in the law, to act as a special Judge or Chancellor to sit as a court, and to hear, decide, and render judgment in the same manner and to the same effect as such incompetent Chancellor or Judge could have rendered but for such incompetency. If the case be a civil one, and the parties or their attorneys of record do not agree; or if it be a criminal one, and the prosecuting officer and the defendant or de-

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SEC. 18. If in any case, civil or criminal, pending in any Circuit, Chancery, or City Court in this State, the presiding Judge or Chancellor shall, for any legal cause, be incompetent to try, hear, or render judgment in such cause, the parties or their attorneys of record, if it be a civil case, or the solicitor or other prosecuting officer, and the defendant or defendants, if it be a criminal case, may agree upon some disinterested person practicing in the court and learned in the law, to act as special Judge or Chancellor, to sit as a court, and to hear, decide, and render judgment in the same manner and to the same effect as a Judge of the Circuit or City Court, or Chancellor sitting as a court might do in such case. If the case be a civil one, and the parties or their attorneys of record do not agree, or if the case be a criminal one, and the prosecuting officer and the defendant or defendants do not agree upon a special Judge or Chancellor, or if either party in a civil cause is not rep-

[SEC. 160.]—

Mr. Cooley says that he does not see how the Legislature can have any power to abolish a maxim which is among the fundamentals of judicial authority. That the people of the State, in framing the Constitution, might possibly establish so great an anomoly, but that the Legislature is not authorized so to do. That to empower one party to a suit to decide it for himself is not within the Legislative authority. He further says that he does not see how objections of interest can be waived by the other party; that the Judge is not then proceeding irregularly, but is acting without jurisdiction; that if even one of the Judges is disqualified the judgment rendered is void, though the proper number may have concurred in the result, not reckoning the interested party. Mere formal acts necessary to enable the cause to be brought before the proper tribunal for adjudication, an interested judge may do, but that is the extent of his power.—Cooley Const. Lim., 510, 511; Queen v. Justice of Hertfordshire, 6 Q. B., 753; 18 Q. B., 416, 421; Heydenfeldt v. Towns, 27 Ala., 423.

If a disqualified Judge arranges for another Judge to hold the term, he may try and determine the issues arising in the case in which the regular Judge is disqualified.—Payne v. State, 60 Ala., 80.

Relationship within the fourth degree of consanguinity or affinity disqualifies.—Gill v. State, 61 Ala., 169.

Statutory provisions are not exclusive of disqualifications imposed by the common law.—Medlin v. Taylor, 101 Ala., 239; Pegues v. Baker, 110 Ala., 251.

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fendants do not agree upon a special Judge or Chancellor, or if either party in a civil cause is not represented in court, the Register in Chancery or the Clerk of such Circuit or other Court in which said cause is pending, shall appoint a special Judge or Chancellor, who shall preside, try and render judgment as in this section provided. The Legislature may prescribe other methods for supplying special Judges in such cases.

SEC. 161. The Legislature shall have power to provide for the holding of Chancery and Circuit Courts, and for the holding of courts having the jurisdiction of Circuit and Chancery Courts, or either of them, when the Chancellors or Judges thereof fail to attend regular terms.

SEC. 162. No Judge of any court of record in this State shall practice law in any of the courts of this State or of the United States.

SEC. 163. Registers in Chancery shall be appointed by the Chancellors of the respective divisions, and shall have been at least twelve months before their appointment, and shall be at the time of their appointment and during their continuance in office, resident citizens of the district for which they are appointed. They shall hold office for the term for which the Chancellor making such appointment was elected or appointed. Such Registers shall receive as compensation for their services only such fees and commissions as may be specifically prescribed by law, which fees shall be uniform throughout the State.

SEC. 164. The Clerk of the Supreme Court shall be appointed by the Judges thereof, and shall hold office for the term of six years; and the Clerks of such inferior courts as may be established by law shall be selected in such manner as the Legislature may provide.

SEC. 165. Clerks of the Circuit Court shall be elected by the qualified electors in each county for the term of six years, and may, when appointed by the Chancellor, also fill the office of Register in

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resented in court, the Clerk of the Circuit or City Court, or Register in Chancery, of the court in which said cause is pending, shall appoint the special Judge or Chancellor, who shall preside, try, and render judgment as in this section provided.

SEC. 19. The General Assembly shall have power to provide for the holding of Circuit and Chancery Courts in this State, when the Judges or Chancellors thereof fail to attend regular terms.

SEC. 20. No Judge of any court of record in this State shall practice law in any of the courts of this State or of the United States.

SEC. 21. Registers in Chancery shall be appointed by the Chancellors of the divisions, and shall hold office during the term of the Chancellor making such appointment; and such Registers shall receive as compensation for their services only such fees and commissions as may be specifically prescribed by law.

SEC. 22. A Clerk of the Supreme Court shall be appointed by the Judges thereof, and shall hold office during the term of the Judges making the appointment; and Clerks of such Inferior Courts as may be established by law shall be appointed by the Judges thereof, and shall hold office during the term of the Judge making such appointment.

SEC. 23. Clerks of the Circuit Court shall be elected by the qualified electors in each county for the term of six years. Vacancies in such office shall be filled by the Governor for the unexpired term.

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Chancery. Vacancies in such office of Clerk shall be filled by the Judge of the Circuit Court for the unexpired term.

SEC. 166. The Clerk of the Supreme Court and Registers in Chancery may be removed from office by the Justices of the Supreme Court, and by the Chancellors, respectively, for cause, to be entered at length upon the minutes of the court.

SEC. 167. A Solicitor for each Judicial Circuit or other territorial subdivision prescribed by the Legislature, shall be elected by the qualified electors of those counties in such circuit or other territorial subdivision in which such Solicitor prosecutes criminal cases, and such Solicitor shall be learned in the law, and shall at the time of his election and during his continuance in office, reside in a county (in the circuit) in which he prosecutes criminal cases, or other territorial subdivision for which he is elected, and his term of office shall be for four years, and he shall receive no other compensation than a salary, to be prescribed by law, which shall not be increased during the term for which he was elected; provided, that this Article shall not operate to abridge the term of any Solicitor now in office; and, provided further, that the Solicitors elected in the year nineteen hundred and four shall hold office for six years, and until their successors are elected and qualified; and provided further, that the Legislature may provide by law for the appointment by the Governor or the election by the qualified electors of a county of a Solicitor for any county.

SEC. 168. In each precinct not lying within, or partly within, any city or incorporated town of more than fifteen hundred inhabitants, there shall be

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SEC. 24. The Clerk of the Supreme Court and Registers in Chancery may be removed from office by the Judges of the Supreme Court and Chancellors respectively, for cause, to be entered at length upon the records of the court.

SEC. 25. A solicitor for each Judicial Circuit shall be elected by joint ballot of the General Assembly, who shall be learned in the law, and who shall, at the time of his election, and during his continuance in office, reside in the circuit for which he is chosen, and whose term of office shall be for six years; *Provided,* that the General Assembly, at the first session thereof after the ratification of this Constitution, shall, by joint ballot, elect a Solicitor for each Judicial Circuit of the State, whose term of office shall begin on Tuesday after the first Monday in November, eighteen hundred and seventy-six, and continue for four years; *And provided,* that the General Assembly may, when necessary, provide for the election or appointment of County Solicitors.

SEC. 26. There shall be elected by the qualified electors of each precinct of the counties not exceeding two Justices of the Peace and one Constable. Such

[Sec. 25, Art. VI, 1875.]—

Mandatory as to Circuit Solicitors; permissive as to county.—Ex parte Lusk, 82 Ala., 519.

[SEC. 168.]—

Not self-executing.—Pearce v. Pope, 42 Ala., 319; Taylor v. Woods, 52 Ala., 474; Carter v. Alford, 64 Ala., 236; K. C. M. & B. R. Co. v. Whitehead, 109 Ala., 495.

Jurisdiction generally. Jurisdiction, in case of moneyed demand, is determined by the amount legally due or actually claimed, not by recovery.—Cothran v. Weir, 3 Ala., 24; Crabtree v. Cliatt, 22 Ala., 181; Carter v. Alford, 64 Ala., 236.

Concurrent with Circuit Court where amount involved is between fifty and one hundred dollars.—Carew v. Lillienthall, 50 Ala., 44.

If debt above jurisdiction is divided and notes given each within the amount, suit may

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elected by the qualified electors of such precinct not exceeding two Justices of the Peace, and one Constable. Where one or more precincts lie within, or partly within, a city or incorporated town having more than fifteen hundred inhabitants, the Legislature may provide by law for the election of not more than two Justices of the Peace and one Constable, for each of such precincts, or an inferior court for such precinct or precincts, in lieu of all Justices of the Peace therein. Justices of the Peace, and the inferior courts in this section provided for, shall have jurisdiction in all civil cases where the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery, and ejectment. The Legislature may provide by law what fees may be charged by Justices of the Peace and Constables, which fees shall be uniform throughout the State. The right of appeal from any judgment of a Justice of the Peace, or from any inferior court authorized by this section, without the prepayment of costs, and also the term of office of such Justices, and of the Judges of such inferior courts, and of Notaries Public, shall be provided for by law. The Governor may appoint Notaries Public without the powers of a Justice of the Peace, and may, except where otherwise provided by an act of the Legislature, appoint not

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Justices shall have jurisdiction in all civil cases wherein the amount in controversy does not exceed one hundred dollars, except in cases of libel, slander, assault and battery, and ejectment. In all cases tried before such Justices the right of appeal, without prepayment of costs, shall be secured by law; *Provided,* that the Governor may appoint one Notary Public for each election precinct in counties, and one for each ward in cities of over five thousand inhabitants, who, in addition to the powers of Notary, shall have and exercise the same jurisdiction as Justices of the Peace within the precincts and wards for which they are respectively appointed; *And provided,* that Notaries Public without jurisdiction may be appointed. The term of office of such Justices and Notaries Public shall be prescribed by law.

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be brought on each note before Justices of the Peace.—Herrin v. Buckalew, 37 Ala., 585.

Plaintiff in an acion on a contract may remit the excess so as to bring the debt within jurisdiction, against defendant's objection.—King v. Dougherty, 2 S., 487; Nibbs v. Moody, 5 S. & P., 198; Bentley v. Wright, 3 Ala., 607; Henderson v. Plumb, 18 Ala., 74; Crabtree v. Cliatt, 22 Ala., 181; Solomon v. Ross, 49 Ala., 198; Carter v. Alford, 64 Ala., 236; Davis v. Bedsole, 69 Ala., 362; Wharton v. King, 69 Ala., 365.

Has jurisdiction of forcible entry and detainer.—Ward v. Lewis, 1 Stew., 26.

Legislature cannot give the right to try title to real estate by calling it unlawful detainer.—Ex parte Webb, 58 Ala., 109; Webb v. Carlisle, 65 Ala., 313.

Right of appeal must be secured.—Tims v. State, 26 Ala., 165.

Notary, with jurisdiction of Justice of the



Peace may exercise both the civil and criminal jurisdiction of a Justice.—Carroll v. State, 58 Ala., 396.

Has power to issue attachments returnable before himself in causes of which he has jurisdiction.—Griffin v. Appleby, 69 Ala., 409; Rice v. Watts 71 Ala., 593.

And by statute, returnable before Circuit or City Court.—Vann v. Adams, 71 Ala., 475; Nordlinger v. Gordon, 72 Ala., 239; Jackson v. Bain, 74 Ala., 328.

Not necessary, but proper, to add "Ex-officio Justice of the Peace" to his signature.—Coleman v. State, 63 Ala., 93.

A statute giving Justices of the Peace final jurisdiction without right of appeal, held not to be due process of law.—Tims v. State, 26 Ala., 165; Ex parte Haughton, 38 Ala., 570.

But if the general law will authorize an appeal in such cases, it is valid.—Thomas v. Bibb, 44 Ala., 721.

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more than one Notary Public with all of the powers and jurisdiction of a Justice of the Peace for each precinct in which the election of Justices of the Peace shall be authorized.

SEC. 169. In all prosecutions for rape and assault with intent to ravish, the court may, in its discretion, exclude from the court room all persons, except such as may be necessary in the conduct of the trial.

SEC. 170. The style of all processes shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the same, and shall conclude "Against the peace and dignity of the State."

SEC. 171. The Legislature shall have the power to abolish any court, except the Supreme Court and the Probate Courts, whenever its jurisdiction and functions have been conferred upon some other court.

SEC. 172. Nothing in this Article shall be so construed as to abridge the term of office of any officer now in office.

## ARTICLE VII.

### IMPEACHMENTS.

SEC. 173 The Governor, Lieutenant Governor, Attorney General, State Aud-

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SEC. 27. An Attorney General shall be elected by the qualified electors of the State at the same time and places of election of members of the General Assembly, whose term of office shall be for two years, and until his successor is elected and qualified. After his election he shall reside at the seat of government, and shall be the law officer of the State, and shall perform such duties as may be required of him by law.

SEC. 28. The style of all process shall be "The State of Alabama," and all prosecutions shall be carried on in the name and by the authority of the same, and shall conclude, "Against the peace and dignity of the State."

## ARTICLE VII.

### IMPEACHMENTS.

SECTION 1. The Governor, Secretary of State, Auditor, Treasurer, Attorney

[SEC. 170.]—

Criminal prosecutions triable without indictment by a grand jury need not conclude "against peace," etc.—Thomas v. State, 107 Ala., 61; Simpson v. State, 111 Ala., 6.

Information in impeachment should so conclude.—Thomas v. State, 107 Ala., 61, 64.

The State may appeal in a criminal case only when the statute on which the indictment is founded was declared void, it does not apply to the charter of a municipal corporation.—State v. Harold, 128 Ala., 39.

[SEC. 173.]—

Where the Constitution provides the mode for the removal of an officer by impeachment, it is a denial of any other mode of removal, hence the Governor cannot remove him and appoint if the Constitution requires removal by impeachment.—Nolen v. State, 118 Ala., 154

The Constitution may change the mode of filling an office and formally abolish the same. —Reynolds v. McAfee, 44 Ala., 237.

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itor, Secretary of State, State Treasurer, Superintendent of Education, Commissioner of Agriculture and Industries, and Justices of the Supreme Court may be removed from office for willful neglect of duty, corruption in office, incompetency, or intemperance in the use of intoxicating liquors or narcotics to such an extent, in view of the dignity of the office and importance of its duties, as unfits the officer for the discharge of such duties, or for any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the Senate sitting as a court of impeachment, under oath or affirmation, on articles or charges preferred by the House of Representatives. When the Governor or Lieutenant Governor is impeached, the Chief Justice, or if he be absent or disqualified, then one of the Associate Justices of the Supreme Court, to be selected by it, shall preside over the Senate when sitting as a court of impeachment. If at any time when the Legislature is not in session, a majority of all the members elected to the House of Representatives shall certify in writing to the Secretary of State their desire to meet to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor, it shall be the duty of the Secretary of State immediately to notify the Speaker of the House, who shall, within ten days after receipt of such notice, summon the members of the House, by publication in some newspaper published at the Capitol, to assemble at the Capitol on a day to be fixed by the Speaker, not later than fifteen days after the receipt of the notice to him from the Secretary of State, to consider the impeachment of the Governor, Lieutenant Governor, or other officer administering the office of Governor. If the House of Representatives prefer articles of impeachment, the Speaker of the House shall forthwith notify the Lieutenant Governor, unless he be the officer impeached, in which event he shall notify the Secretary of State, who shall summon, in the manner herein above provided for, the members of the Senate to assemble at the Capitol on a day to be named in

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General, Superintendent of Education and Judges of the Supreme Court may be removed from office for willful neglect of duty, corruption in office, habitual drunkenness, incompetency, or any offense involving moral turpitude while in office, or committed under color thereof, or connected therewith, by the Senate, sitting as a court for that purpose, under oath or affirmation, on articles or charges preferred by the House of Representatives.

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said summons, not later than ten days after receipt of the notice from the Speaker of the House, for the purpose of organizing as a court of impeachment. The Senate, when thus organized, shall hear and try such articles of impeachment against the Governor, Lieutenant Governor or other officer administering the office of Governor, as may be preferred by the House of Representatives.

SEC. 174. The Chancellors, Judges of the Circuit Courts, Judges of the Probate Courts, and Judges of other courts from which an appeal may be taken directly to the Supreme Court, and Solicitors and Sheriffs, may be removed from office for any of the causes specified in the preceding section or elsewhere in this Constitution, by the Supreme Court, under such regulations as may be prescribed by law. The Legislature may provide for the impeachment or removal of other officers than those named in this article.

SEC. 175. The Clerks of the Circuit Courts, or courts of like jurisdiction, and of Criminal Courts, Tax Collectors, Tax Assessors, County Treasurers, County Superintendents of Education, Judges of inferior courts created under authority of Section 168 of this Constitution, Coroners, Justices of the Peace, Notaries Public, Constables, and all other county officers, Mayors, Intendants and all other officers of incorporated cities and towns in this State, may be removed from office for any of the causes specified in Section 173 of this Constitution, by the Circuit or other courts of like jurisdiction or a Criminal Court of the county in which such

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SEC. 2. The Chancellors, Judges of the Circuit Courts, Judges of the Probate Courts, Solicitors of the Circuits, and Judges of inferior courts from which an appeal may be taken directly to the Suprme Court, may be removed from office for any of the causes specified in the preceding section, by the Supreme Court, under such regulations as may be prescribed by law.

SEC. 3. The Sheriffs, Clerks of the Circuit, City, or Criminal Courts, Tax-Collectors, Tax Assessors, County Treasurers, Coroners, Justices of the Peace, Notaries Public, Constables, and all other county officers, Mayors, and intendants of incorporated cities and towns in this State, may be removed from office for any of the causes specified in Section One of this Article, by the Circuit, City, or Criminal Court of the county in which such officers hold their office, under such regulations as may be prescribed by law. *Provided,* that the right of trial by jury and appeal in such cases be secured.

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[SEC. 174.]—

State v. Buckley, 54 Ala., 599; State v. Savage, 89 Ala., 1; State v. Tally, 102 Ala., 25; State v. Robinson, 111 Ala., 482.

[SEC. 175.]—

State v. Seawell, 64 Ala., 225; Ex parte Wiley, 54 Ala., 226.

An Act authorizing the Governor to suspend Tax Assessors and appoint a Tax Commissioner to perform his duties is void.—Nolen v. State, 118 Ala., 154.

A Tax Assessor can be removed from office only in the manner prescribed in Constitution.—Nolen v. State, 118 Ala., 154.

Does not prohibit Legislature from abolishing courts and offices of statutory creation.—Hawkins v. Roberts, 122 Ala., 130; 45 Ala., 303.

Rule is different as to offices created by Constitution.—*Ib.* Ex parte Lambert, 52 Ala., 79.

It is no objection to a statute providing for the creation of a new tribunal, that the sole purpose of the Governor in recommending the enactment, was to expel the incumbents of an existing office, without allowing them a jury trial.—Hawkins v. Roberts & Morrow v. Earle, 122 Ala., 130.

Where the Constitution provides the mode for the removal of an officer by impeachment, it is a denial of any other mode of removal, hence the Governor cannot remove him from office and appoint, if the Constitution requires removal by impeachment.—Nolen v. State, 118 Ala., 154.

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officers hold their office, under such regulations as may be prescribed by law; provided, that the right of trial by jury and appeal in such cases shall be secured.

SEC. 176. The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualifications from holding office, under the authority of this State, for the term for which the officer was elected or appointed; but the accused shall be liable to indictment and punishment as prescribed by law.

## ARTICLE VIII.

### SUFFRAGE AND ELECTIONS.

SEC. 177. Every male citizen of this State who is a citizen of the United States, and every male resident of foreign birth, who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the

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SEC. 4. The penalties in cases arising under the three preceding sections shall not extend beyond removal from office, and disqualification from holding office under the authority of this State, for the term for which he was elected or appointed; but the accused shall be liable to indictment, trial, and punishment, as prescribed by law.

## ARTICLE VIII.

### SUFFRAGE AND ELECTIONS.

SEC. 1. Every male citizen of the United States, and every male person of foreign birth, who may have legally declared his intention to become a citizen of the United States before he offers to vote, who is twenty-one years old or

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[SEC. 177.]—

Elections are the machines through which the voice of the people acting in their sovereign capacity is transformed into law. These elections must be exercised at the time, place and in the manner prescribed by the Constitution and statutes which the people, through their agents, have constituted. By means of elections the people choose these officers and choose those who shall exercise the legislative, executive and judicial functions of the Government. The Constitutions of various States contain provisions that certain specific propositions, such as amendments of Constitutions, removal of county seats, election of officers, etc., shall be determined by the vote of the electors, either by a majority or sometimes by two-thirds majority of the electors. While the sovereignty is in the people, theoretically speaking, practically considered it resides in those persons only who are permitted to exercise the right of elective franchise.—Cooley Const. Lim., 752.

The power to determine who are qualified electors and who are entitled to exercise the elective franchise is left to the several States. The Federal Constitution does not prescribe the regulations as to this matter, except that the electors for Representatives in Congress shall have the qualifications requisite for electors of the most numerous branch of the State Legislature, and also the 15th amendment, which forbids the State from denying any citizen the right to vote on account of race, color or previous condition of servitude. The exercise of elective franchise is a privilege, and not a right; the State may grant or deny the right; aliens are denied the right. The 15th amendment does not deny the State the right to forbid any person from voting, but only provides that he shall not be excluded on account of his race, color or previous condition of servitude. Minors and women may be and are usually excluded from the right to vote, and also those who have been convicted of infamous crimes, also idiots and lunatics, also non-residents of the State, county or municipality, etc., in which the election is to be held; but these are not the only qualifications that the States may require; they may require any qualifications or exclude any person or class of persons unless the Federal Constitution or the State Constitution forbids it. The State may provide registration laws and require that citizens conform thereto before they are entitled to vote. It is no excuse to the validity of such law that the registering officer may neglect to perform every duty and thereby disfranchise the electors; the remedy would be for the elector to compel the performance of the duty; but regulations as to elective franchise must be reasonable and uniform and impartial, and they should not deny or abridge the constitutional right of the citizen nor unnecessarily impede its exercise. Statutes may prescribe the time and place of elections and they may also prescribe the notice to be given of the election.—Cooley Const. Lim., 757, 758.

An Act providing for amendment to Constitution, making the failure of voter to erase printed matter on ticket an affirmitive vote for the amendment is valid.—May & Thomas Co. v. Mayor of Birmingham, 123 Ala., 306.

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United States, 21 years old or upwards, not laboring under any of the disabilities named in this article, and possessing the qualifications required by it, shall be an elector, and shall be entitled to vote at any election by the people; provided, that all foreigners who have legally declared their intention to become citizens of the United States, shall, if they fail to become citizens thereof at the time they are entitled to become such, cease to have the right to vote until they become such citizens.

SEC. 178. To entitle a person to vote at any election by the people, he shall have resided in the State at least two years, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and he shall have been duly registered as an elector, and shall have paid on or before the first day of February next preceding the date of the election at which he offers to vote, all poll taxes due from him for the year nineteen hundred and one, and for each subsequent year; provided that any elector who, within three months next preceding the date of the election at which he offers to vote, has removed from one precinct or ward to another precinct or ward in the same county, incorporated town or city, shall have the right to vote in the precinct or ward from which he has so removed, if he would have been entitled to vote in such precinct or ward but for such removal.

SEC. 179. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be viva voce.

SEC. 180. The following male citizens of this State, who are citizens of the United States, and every male resident of

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upwards, possessing the following qualifications, shall be an elector, and shall be entitled to vote at any election by the people, except as hereinafter provided:

First.—He shall have resided in the State at least one year immediately preceding the election at which he offers to vote.

Second.—He shall have resided in the county for three months, and in the precinct or ward for thirty days immediately preceding the election at which he offers to vote; *Provided,* that the General Assembly may prescribe a longer or shorter residence in any precinct in any county or in any ward in any incorporated city or town having a population of more than five thousand inhabitants, but in no case to exceed three months; *And provided,* that no soldier, sailor or marine in the military or naval service of the United States, shall acquire a residence by being stationed in this State.

SEC. 2. All elections by the people shall be by ballot, and all elections by persons in a representative capacity shall be *viva voce.*

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An election may be a legal one under a special law, if there is no constitutional inhibition against it, although it is not such an election as is contemplated in the Constitution.—State, ex rel. Porter v. Crook, 126 Ala., 600.

Under the Constitution of 1819 every white male person over the age of 21 years, who was a citizen of the United States and who had resided in the State one year before the election, and three years within the county or town, was a qualified elector.—126 Ala., 612.

It is doubted whether Art. 8 of the Constitution has reference to any election other than those held to elect public officers.—State, ex rel., Porter v. Crook, 126 Ala., 610.

The Legislature may pass a law to become valid only after an approval by a majority of the people ratifying it.—State, ex rel., Porter v. Crook, 126 Ala., 600; Ex parte Hill, 40 Ala., 121.

General election laws do not apply to elections other than for election of officers; not to change of county seats, etc.—State, ex rel., Porter v. Crook, 126 Ala., 600; Leigh v. State, 69 Ala., 261; McGraw v. Commissioners, 89 Ala., 407; Gandy v. State, 82 Ala., 61.

foreign birth who, before the ratification of this Constitution, shall have legally declared his intention to become a citizen of the United States, and who shall not have had an opportunity to perfect his citizenship prior to the twentieth day of December, nineteen hundred and two, twenty-one years old or upwards, who, if their place of residence shall remain unchanged, will have, at the date of the next general election the qualifications as to residence prescribed in Section 178 of this Constitution, and who are not disqualified under Section 182 of this Constitution, shall, upon application, be entitled to register as electors prior to the twentieth day of December, nineteen hundred and two, namely:

First—All who have honorably served in the land or naval forces of the United States in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the States, or in the war with Spain, or who honorably served in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the States; or,

Second—The lawful descendants of persons who honorably served in the land or naval forces of the United States in the war of the American Revolution, or in the war of 1812, or in the war with Mexico, or in any war with the Indians, or in the war between the States, or in the land or naval forces of the Confederate States, or of the State of Alabama in the war between the States; or,

Third—All persons who are of good character and who understand the duties and obligations of citizenship under a republican form of government.

SEC. 181. After the first day of January, nineteen hundred and three, the following persons, and no others, who, if their place of residence shall remain unchanged, will have, at the date of the next general election, the qualifications as to residence prescribed in Section 178 of this article, shall be qualified to register as electors; provided, they shall not be disqualified under Section 182 of this Constitution.

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First—Those who can read and write any article of the Constitution of the United States in the English language, and who are physically unable to work; and those who can read and write any article of the Constitution of the United States in the English language, and who have worked or been regularly engaged in some lawful employment, business or occupation, trade or calling for the greater part of the twelve months next preceding the time they offer to register; and those who are unable to read and write, if such inability is due solely to physical disability; or,

Second—The owner in good faith in his own right, or the husband of a woman who is the owner in good faith, in her own right, of forty acres of land situate in this State, upon which they reside; or the owner in good faith in his own right, or the husband of any woman who is the owner in good faith, in her own right, of real estate situated in this State, assesed for taxation at the value of three hundred dollars or more, or the owner in good faith, in his own right, or the husband of a woman who is the owner in good faith, in her own right, of personal property in this State assessed for taxation at three hundred dollars or more; provided, that the taxes due upon such real or personal property for the year next preceding the year in which he offers to register shall have been paid, unless the assessment shall have been legally contested and is undetermined.

SEC. 182. The following persons shall be disqualified both from registering, and from voting, namely:

All idiots and insane persons; those who shall by reason of conviction of crime be disqualified from voting at the time of the ratification of this Constitution; those who shall be convicted of treason, murder, arson, embezzlement, malfeasance in office, larceny, receiving stolen

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SEC. 3. The following classes shall not be permitted to register, vote or hold office:

First.—Those who shall have been convicted of treason, embezzlement of public funds, malfeasance in office, larceny, bribery, or other crime punishable by imprisonment in the penitentiary.

Second.—Those who are idiots or insane.

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[SEC. 182.]—

Does not impinge the Federal Constitution; nature of the elective franchise; forfeited by the commission of any of the crimes here mentioned, or any grade of them.—Washington v. State, 75 Ala., 582; Anderson v. State, 72 Ala., 187; Gandy v. State, 82 Ala., 61, 86 Ala., 20.

property, obtaining property or money under false pretenses, perjury, subornation of perjury, robbery, assault with intent to rob, burglary, forgery, bribery, assault and battery on the wife, bigamy, living in adultery, sodomy, incest, rape, miscegenation, crime against nature, or any crime punishable by imprisonment in the penitentiary, or of any infamous crime or crime involving moral turpitude; also, any person who shall be convicted as a vagrant or tramp, or of selling or offering to sell his vote or the vote of another, or of buying or offering to buy the vote of another, or of making or offering to make a false return in any election by the people or in any primary election to procure the nomination or election of any person to any office, or of suborning any witness or registrar to secure the registration of any person as an elector.

SEC. 183. No person shall be qualified to vote, or participate in any primary election, (*a*) party convention, mass meeting or other method of party action of any political party or faction, who shall not possess the qualifications prescribed in this article for an elector, or who shall be disqualified from voting under the provisions of this article.

SEC. 184. No person, not registered and qualified as an elector under the provisions of this article shall vote at the general election in nineteen hundred and two, or at any subsequent State, county or municipal election, general, local or special; but the provisions of this article shall not apply to any election held prior to the general election in the year nineteen hundred and two.

SEC. 185. Any elector whose right to vote shall be challenged for any legal cause before an election officer, shall be required to swear or affirm that the matter of the challenge is untrue before his vote shall be received, and anyone who willfully swears or affirms falsely thereto, shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

(a) Acts 1903, p. 356.

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SEC. 186. The Legislature shall provide by law for the registration, after the first day of January, nineteen hundred and three, of all qualified electors. (*a*) Until the first day of January, nineteen hundred and three, all electors shall be registered under and in accordance with the requirements of this section as follows:

First—Registration shall be conducted in each county by a board of three reputable and suitable persons resident in the county, who shall not hold any elective office during their term, to be appointed, within sixty days after the ratification of this Constitution, by the Governor, Auditor and Commissioner of Agriculture and Industries, or by a majority of them acting as a Board of Appointment. If one or more of the persons appointed on such a Board of Registration shall refuse, neglect or be unable to qualify or serve, or if a vacancy or vacancies occur in the membership of the Board of Registrars from any cause, the Governor, Auditor and Commissioner of Agriculture and Industries, or a majority of them, acting as a Board of Appointment, shall make other appointments to fill such board. Each registrar shall receive two dollars per day, to be paid by the State, and disbursed by the several Judges of Probate, for each entire day's attendance upon the session of the Board. Before entering upon the performance of the duties of his office, each registrar shall take the same oath required of the judicial officers of the State, which oath may be administered by any person authorized by law to administer oaths. The oath shall be in writing and subscribed by the registrar, and filed in the office of the Judge of Probate of the county.

Second—Prior to the first day of August, nineteen hundred and two, the Board of Registrars in each county shall visit each precinct at least once and oftener if necessary to make a complete registration of all persons entitled to register, and shall remain there at least one day from eight o'clock in the morning until sunset. They shall give at least twenty days' notice of the time when, and the

(a) Acts 1903, pp. 438 and 356.

place in the precinct where they will attend to register applicants for registration, by bills posted at five or more public places in each election precinct, and by advertisement once a week for three successive weeks in a newspaper, if there be one published in the county. Upon failure to give such notice, or to attend any appointment made by them in any precinct, they shall, after like notice, fill new appointments therein; but the time consumed by the board in completing such registration shall not exceed sixty working days in any county, except that in counties of more than nine hundred square miles in area, such board may consume seventy-five working days in completing the registration, and except that in counties in which there is any city of eight thousand or more inhabitants, the board may remain in session, in addition to the time hereinbefore prescribed, for not more than three successive weeks in each of such cities; and thereafter the board may sit from time to time in each of such cities not more than one week in each month, and except that in the county of Jefferson the board may hold an additional session of not exceeding five consecutive days' duration for each session, in each town or city of more than one thousand and less than eight thousand inhabitants. No person shall be registered except at the county site or in the precinct in which he resides. The registrars shall issue to each person registered a certificate of registration.

Third—The Board of Registrars shall not register any person between the first day of August, nineteen hundred and two, and the Friday next preceding the day of election in November, nineteen hundred and two. On Friday and Saturday next preceding the day of election in November, nineteen hundred and two, they shall sit in the court house of each county during such days, and shall register all applicants having the qualifications prescribed by Section 180 of this Constitution and not disqualified under Section 182, who shall have reached the age of twenty-one years after the first day of August, nineteen hundred and two, or who shall prove to the reasonable satis-

faction of the board that, by reason of physical disability or unavoidable absence from the county, they had no opportunity to register prior to the first day of August, nineteen hundred and two, and they shall not on such days register any other persons. When there are two or more court houses in a county, the registrars may sit during such two days at the court house they may select, but shall give ten days' notice, by bills posted at each of the court houses, designating the court house at which they will sit.

Fourth—The Board of Registrars shall hold sessions at the court house of their respective counties during the entire third week in November, nineteen hundred and two, and for six working days next prior to the twentieth day of December, nineteen hundred and two, during which sessions they shall register all persons applying who possess the qualifications prescribed in Section 180 of this Constitution, and who shall not be disqualified under Section 182. In counties where there are two or more court houses the Board of Registrars shall divide the time equally between them. The Board of Registrars shall give notice of the time and place of such sessions by posting notices at each court house in their respective counties, and at each voting place and at three other public places in the county, and by publication once a week for two consecutive weeks in a newspaper, if one be published in the county; such notices to be posted and such publications to be commenced as early as practicable in the first week of November, nineteen hundred and two. Failure on the part of the registrars to conform to the provisions of this article as to the giving of the required notices shall not invalidate any registration made by them.

Fifth—The Board of Registrars shall have power to examine, under oath or affirmation, all applicants for registration, and to take testimony touching the qualifications of such applicants. Each member of such board is authorized to administer the oath to be taken by the applicants and witnesses, which shall be in the following form, and subscribed by the

person making it, and preserved by the board, namely: "I solemnly swear (or affirm) that in the matter of the application of ..... for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God." Any person who upon such examination makes any willfully false statement in reference to any material matter touching the qualification of any applicant for registration shall be guilty of perjury, and upon conviction thereof, shall be imprisoned in the penitentiary for not less than one nor more than five years.

Sixth—The action of the majority of the Board of Registrars shall be the action of the board, and a majority of the board shall constitute a quorum for the transaction of all business. Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within thirty days after such denial, by filing a petition in the Circuit Court or court of like jurisdiction held for the county in which he seeks to register, to have his qualifications as an elector determined. Upon the filing of the petition the clerk of the court shall give notice thereof to any Solicitor authorized to represent the State in said county, whose duty it shall be to appear and defend against the petition on behalf of the State. Upon such trial the court shall charge the jury only as to what constituted the qualifications that entitled the applicant to become an elector at the time he applied for registration, and the jury shall determine the weight and effect of the evidence and return a verdict. From the judgment rendered an appeal will lie to the Supreme Court in favor of the petitioner, to be taken within thirty days. Final judgment in favor of the petitioner shall entitle him to registration as of the date of his application to the registrars.

Seventh—The Secretary of State shall, at the expense of the State, have prepared and shall furnish to the registrars and Judges of Probate of the several counties a sufficient numbers of registration books and of blank forms of the oath, certificates of registration and notices required to be given by the registrars. The cost

of the publication in newspapers of the notices required to be given by the registrars shall be paid by the State, the bills therefor to be rendered to the Secretary of State and approved by him.

Eighth—Any person who registers for another, or who registers more than once, and any registrar who enters the name of any person on the list of registered voters, without such person having made application in person under oath on a form provided for that purpose, or who knowingly registers any person more than once, or who knowingly enters a name upon the registration list as the name of a voter, without any one of that name applying to register, shall be guilty of a felony, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

SEC. 187. The Board of Registrars in each county shall on or before the first day of February, nineteen hundred and three, or as soon thereafter as practicable, file in the office of the Judge of Probate in their county, a complete list sworn to by them of all persons registered in their county, showing the age of such persons so registered, with the precinct or ward in which each of such persons resides set opposite the name of such persons, and shall also file a like list in the office of the Secretary of State. The Judge of Probate shall, on or before the first day of March, nineteen hundred and three, or as soon thereafter as practicable, cause to be made from such list in duplicate, in the books furnished by the Secretary of State, an alphabetical list by precincts of the persons shown by the list of the registrars to have been registered in the county, and shall file one of such alphabetical lists in the office of the Secretary of State; for which services by the Judges of Probate compensation shall be provided by the Legislature. The Judges of Probate shall keep both the original list filed by the registrars and the alphabetical list made therefrom as records in the office of the Judge of Probate of the county (*a*). Unless he shall become disqualified under the provisions of this article, any one who

(a) Acts 1903, p. 56, compensation for.

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shall register prior to the first day of January, nineteen hundred and three, shall remain an elector during life, and shall not be required to register again unless he changes his residence, in which event he may register again on production of his certificate. The certificate of the registrars or of the Judge of Probate or of the Secretary of State shall be sufficient evidence to establish the fact of such life registration. Such certificate shall be issued free of charge to the elector, and the Legislature shall provide by law for the renewal of such certificate when lost, mutilated or destroyed.

SEC. 188. From and after the first day of January, nineteen hundred and three, any applicant for registration may be required to state under oath, to be administered by the registrar or by any person authorized by law to administer oaths, where he lived during the five years next preceding the time at which he applies to register, and the name or names by which he was known during that period, and the name of his employer or employers, if any, during such period. Any applicant for registration who refuses to state such facts, or any of them, shall not be entitled to register, and any person so offering to register, who willfully makes a false statement in regard to such matters or any of them, shall be guilty of perjury, and upon conviction thereof shall be imprisoned in the penitentiary for not less than one nor more than five years.

SEC. 189. In the trial of any contested election, and in proceedings to investigate any election, and in criminal prosecutions for violations of the election laws, no person other than a defendant in such criminal prosecutions shall be allowed to withhold his testimony on the ground that he may criminate himself or subject himself to public infamy; but such person shall not be prosecuted for any offense arising out of the transactions concerning which he testified, but may be prosecuted for perjury committed on such examination.

SEC. 190. The Legislature shall pass laws not inconsistent with this Constitution to regulate and govern elections, (*a*) and

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SEC. 5. The General Assembly shall pass laws, not inconsistent with this Constitution, to regulate and govern

(a) Acts 1903, p. 438.

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all such laws shall be uniform throughout the State; and shall provide by law for the manner of holding elections and of ascertaining the result of the same, and shall provide general registration laws not inconsistent with the provisions of this article, for the registration of all qualified electors from and after the first day of January, nineteen hundred and three. The Legislature shall also make provision by law, not inconsistent with this article, for the regulation of primary elections, (a) and for punishing frauds at the same, but shall not make primary elections compulsory. The Legislature shall by law provide for purging the registration list of the names of those who die, become insane, or convicted of crime, or otherwise disqualified as electors under the provisions of this Constitution, and of any names which may have been fraudulently entered on such list by the registrars; provided, that a trial by jury may be had on the demand of any person whose name is proposed to be stricken from the list.

SEC. 191. It shall be the duty of the Legislature to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

SEC. 192. Electors shall in all cases, except treason, felony or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

SEC. 193. Returns of elections for members of the Legislature and for all civil officers who are to be commissioned by the Governor, except the Attorney General, State Auditor, Secretary of

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elections in this State, and all such laws shall be uniform throughout the State. The General Assembly may, when necessary, provide by law for the registration of electors throughout the State, or in any incorporated city or town thereof, and when it is so provided, no person shall vote at any election unless he shall have registered as required by law.

SEC. 6. It shall be the duty of the General Assembly to pass adequate laws giving protection against the evils arising from the use of intoxicating liquors at all elections.

SEC. 4. Electors shall in all cases, except treason, felony, or breach of the peace, be privileged from arrest during their attendance at elections, or while going to or returning therefrom.

SEC. 7. Returns of elections for all civil officers who are to be commissioned by the Governor, except Secretary of State, State Auditor, State Treasurer and Attorney General, and for members

(a) Acts 1903, p. 356.

[SEC. 190.]—

Court could decline to pass upon the question whether this section or Article of the Constitution was in violation of the Fourteenth and fifteenth Amendments in an action against Registrars for failure to register plaintiff. For the reason assigned plaintiff could not succeed in his action in either event. If it is void he could not succeed, and if valid he would be in no better condition.—Giles v. Teasley, 136 Ala., 164. Affirmed on appeal to Supreme Court of U. S. MSS.

Does not apply to elections for removal of court house.—State, ex rel., Porter v. Crook, 126 Ala., 600.

An Act providing that election for a vote of electors to determine the location of court house, which is not in accordance with general election laws is not a violation of this provsion. —State, ex rel., Porter v. Crook, 126 Ala., 600.

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State, State Treasurer, Superintendent of Education, and Commissioner of Agriculture and Industries, shall be made to the Secretary of State.

SEC. 194. The poll tax mentioned in this article shall be one dollar and fifty cents upon each male inhabitant of the State, over the age of twenty-one years, and under the age of forty-five years, who would not now be exempt by law; but the Legislature is authorized to increase the maximum age fixed in this section to not more than sixty years. Such poll tax shall become due and payable on the first day of October in each year, and become delinquent on the first day of the next succeeding February, but no legal process, nor any fee of commission shall be allowed for the collection thereof. The Tax Collector shall make returns of poll tax collections separate from other collections.

SEC. 195. Any person who shall pay the poll tax of another, or advance him money for that purpose in order to influence his vote, shall be guilty of bribery, and upon conviction therefor shall be imprisoned in the penitentiary for not less than one nor more than five years.

SEC. 196. If any section or sub-division of this article shall, for any reason, be or be held by any court of competent jurisdiction and of final resort to be invalid, inoperative or void, the residue of this article shall not be thereby invalidated or affected.

## ARTICLE IX.

### REPRESENTATION.

SEC. 197. The whole number of Senators shall be not less than one-fourth or more than one-third of the whole number of Representatives.

SEC. 198. The House of Representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one Representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them re-



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of the General Assembly, shall be made to the Secretary of State.

## ARTICLE IX.

### REPRESENTATION.

SECTION 1. The whole number of Senators shall be not less than one-fourth or more than one-third the whole number of Representatives.

SEC. 2. The House of Representatives shall consist of not more than one hundred members, who shall be apportioned by the General Assembly among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States for the year eighteen hundred and eighty; which apportionment, when made, shall not be

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spectively, as ascertained by the decennial census of the United States, which apportionment when made shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.

SEC. 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives and apportion them among the several counties of the State, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative.

SEC. 200. It shall be the duty of the Legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators, and to divide the State into as many Senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

SEC. 201. Should any decennial census of the United States not be taken, or if when taken the same, as to this State be not full and satisfactory, the Legislature shall have the power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportion-

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subject to alteration until the first session of the General Assembly after the next decennial census of the United States shall have been taken.

SEC. 3. It shall be the duty of the General Assembly, at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the State; *Provided,* that each county shall be entitled to at least one Representative.

SEC. 4. It shall be the duty of the General Assembly, at its first session after the taking of the decennial census of the United States in the year eighteen hundred and eighty, and after each subsequent decennial census, to fix by law the number of Senators, and to divide the State into as many senatorial districts as there are Senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and which districts, when formed, shall not be changed until the next apportioning session of the General Assembly after the next decennial census of the United States shall have been taken. No county shall be divided between two districts, and no district shall be made of two or more counties not contiguous to each other.

SEC. 5. Should the decennial census of the United States, from any cause, not be taken, or if, when taken, the same as to this State is not full and satisfactory, the General Assembly shall have power, at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, and once in each ten years thereafter, upon

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ment of Representatives and Senators as provided for in this article.

SEC. 202. Until the Legislature shall make an apportionment of Representatives among the several counties, as provided in the preceding section, the counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, St. Clair, Shelby, Washington, and Winston, shall each have one Representative; the counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker, and Wilcox, shall each have two Representatives; the counties of Dallas and Mobile shall each have three Representatives; the county of Montgomery shall have four Representatives; and the county of Jefferson shall have seven Representatives.

SEC. 203. Until the Legislature shall divide the State into Senatorial districts, as herein provided, the Senatorial districts shall be as follows:

First district, Lauderdale and Limestone; Second district, Lawrence and Morgan; Third district, Blount, Cullman and Winston; Fourth district, Madison; Fifth district, Jackson and Marshall; Sixth district, Etowah and St. Clair; Seventh district, Calhoun; Eighth district, Talladega; Ninth district, Chambers and Randolph; Tenth district, Tallapoosa and Elmore; Eleventh district, Tuscaloosa; Twelfth district, Fayette, Lamar and Walker; Thirteenth district, Jefferson; Fourteenth district, Pickens and Sumter; Fifteenth district, Autauga, Chilton and Shelby; Sixteenth district, Lowndes; Seventeenth district, Butler, Conecuh and Covington; Eighteenth district, Bibb and

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which it shall be the duty of the General Assembly to make the apportionment of Representatives and Senators as provided in this Article.

SEC. 6. Until the General Assembly shall make an apportionment of Representatives among the several counties, after the first decennial census of the United States, as herein provided, the counties of Autauga, Baldwin, Bibb, Bliount, Calhoun, Chilton, Cherokee, Choctaw, Clark, Clay, Cleyburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Dale, DeKalb, Elmore, Etowah, Escambia, Fayette, Franklin, Geneva, Henry, Lauderdale, Marion, Morgan, Monroe, Marshall, Randolph, Sanford, Shelby, St. Clair, Walker, Washington and Winston shall each have one Representative; the counties of Barbour, Bullock, Butler, Chambers, Greene, Hale, Jackson, Jefferson, Limestone, Lawrence, Lowndes, Lee, Macon, Marengo, Perry, Pickens, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa and Wilcox shall have each two Representatives; the county of Madison shall have three Representatives; the counties of Dallas and Montgomery shall have each four Representatives; and the county of Mobile shall have five Representatives.

SEC. 7. Until the General Assembly shall divide the State into senatorial districts, as herein provided, the senatorial districts shall be as follows:

First district, Lauderdale and Limestone; second district, Colbert and Lawrence; third district, Morgan, Winston, and Blount; fourth district, Madison; fifth district, Marshall, Jackson, and DeKalb; sixth district, Cherokee, Etowah, and St. Clair; seventh district, Calhoun and Cleburne; eighth district, Talladega and Clay; ninth district, Randolph and Chambers; tenth district, Macon and Tallapoosa; eleventh district, Bibb and Tuscaloosa; twelfth district, Franklin, Marion, Fayette, and Sanford; thirteenth district, Walker, Jefferson, and Shelby; fourteenth district, Greene and Pickens; fifteenth district, Coosa, Elmore, and Chilton; sixteenth district, Lowndes and

*Exemptions.*

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Perry; Nineteenth district, Choctaw, Clarke and Washington; Twentieth district, Marengo; Twenty-first district, Baldwin, Escambia and Monroe; Twenty-second district, Wilcox; Twenty-third district, Dale and Geneva; Twenty-fourth district, Barbour; Twenty-fifth district, Coffee, Crenshaw and Pike; Twenty-sixth district, Bullock and Macon; Twenty-seventh district, Lee and Russell; Twenty-eighth district, Montgomery; Twenty-ninth district, Cherokee and DeKalb; Thirtieth district, Dallas; Thirty-first district, Colbert, Franklin and Marion; Thirty-second district, Greene and Hale; Thirty-third district, Mobile; Thirty-fourth district, Cleburne, Clay and Coosa; Thirty-fifth district, Henry.

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Autauga; seventeenth district, Butler and Conecuh; eighteenth district, Perry; nineteenth district, Choctaw, Clark, and Washington; twentieth district, Marengo; twenty-first district, Monroe, Escambia, and Baldwin; twenty-second district, Wilcox; twenty-third district, Henry, Coffee, Dale, Geneva; twenty-fourth district, Barbour; twenty-fifth district, Pike, Crenshaw, and Covington; twenty-sixth district, Bullock; twenty-seventh district, Lee; twenty-eighth district, Montgomery; twenty-ninth district, Russell; thirtieth district, Dallas; thirty-first district, Sumter; thirty-second district, Hale; thirty-third district, Mobile.

## ARTICLE X.

### EXEMPTIONS.

SEC. 204. The personal property of any resident of this State to the value of one thousand dollars, to be selected by such resident, shall be exempt from sale or execution, or other process of any court, is-

## ARTICLE X.

### EXEMPTED PROPERTY.

SECTION 1. The personal property of any resident of this State, to the value of one thousand dollars, to be selected by such resident, shall be exempted from sale on execution, or other process of any

[SEC. 204.]—

Must be liberally construed.—Webb v. Edwards, 46 Ala., 17; Fearn v. Ward, 65 Ala., 33.

The right of selection belongs to the debtor and is beyond the reach of legislative or judicial restraint before sale.—Bray v. Laird, 44 Ala., 295; Brewer v. Granger, 45 Ala., 580; Webb v. Edwards 46 Ala., 17; Ala. Conference v. Vaughan, 54 Ala., 443; Williamson v. Harris, 57 Ala., 40; Enzor v. Hurt, 76 Ala., 595.

A mere personal privilege to be exercised or not at the option of the debtor.—Graham v. Walker, 10 Ala., 370; Ross v. Hannah, 18 Ala., 125; Bell v. Davis, 42 Ala., 460; Brown v. Lietch, 60 Ala., 313; Sherry v. Brown, 66 Ala., 51; Randolph v. Little, 62 Ala., 396; Patillo v. Taylor, 83 Ala., 230; Stanley v. Ehrman, 83 Ala., 215; Motley v. Jones, 98 Ala., 443; Kennedy v. Bank, 107 Ala., 170.

The claim must show that the debt was contracted since the ordination and enactment of the exemption laws.—Randolph v. Little, 62 Ala., 396; Young v. Hubbard, 102 Ala., 373; Ely v. Blacker, 112 Ala., 311.

As between debtor and creditor the right depends on the law existing at the creation of the debt.—Ala. Conference v. Vaughan, 54 Ala., 443; Wilson v. Brown, 58 Ala., 62; Nelson v. McCrary, 60 Ala., 301; Blum v. Carter, 63 Ala., 235; Fearn v. Ward, 65 Ala., 33; Giddens v. Williamson, 65 Ala., 439; Carlisle v. Godwin, 68 Ala., 137; Keel v. Larkin, 72 Ala., 493; Cochran v. Miller, 74 Ala., 50; Park v. Spencer, 75 Ala., 49.

"Personal property" is used in its largest sense, and includes choses in action, money, or any other personal property.—Webb v. Edwards, 46 Ala., 17; Dane v. Loomis, 51 Ala., 487; Williamson v. Harris, 57 Ala., 40; Alley v. Daniel, 75 Ala., 403; Enzor v. Hurt, 76 Ala., 595; Kennedy v. Smith, 99 Ala., 83.

Residence within the State essential.—Auerbach v. Pritchett, 58 Ala., 451; Talmadge v. Talmadge, 66 Ala., 199; McCrary v. Chase, 71 Ala., 540.

A resident need not have a family to be entitled.—Webb v. Edwards, 46 Ala., 17.

May be claimed by a married woman.—Bender v. Meyer, 55 Ala., 576; Scheussler v. Wilson, 56 Ala., 516.

Doubtful whether an absconding debtor entitled.—McBrayer v. Dillard, 49 Ala., 174.

Neither a partnership, nor the partners during the continuance of the relation, can claim individual exemption in partnership property levied on for partnership debt.—Giovanni v. First Nat'l Bank, 55 Ala., 305 (overruling Howard v. Jones, 50 Ala., 67; Dunklin v. Kimball, 50 Ala., 251; Giovanni v. First Nat'l Bank, 51 Ala., 177); Terrell v. Hurst, 76 Ala., 588; Levy v. Williams, 79 Ala., 171; Schlapback v. Long, 90 Ala., 525; Aiken v. Steiner, 98 Ala., 355.

Costs in a civil suit ex contractu is a debt against which exemption may be claimed.—Clingman v. Kemp, 57 Ala., 195.

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sued for the collection of any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight or after the ratification of this Constitution.

SEC. 205. Every homestead, not exceeding eighty acres, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any city, town or village, or in lieu thereof, at the option of the owner, any lot in a city,

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court, issued for the collection of any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight, or after the ratification of this Constitution.

SEC. 2. Every homestead, not exceeding eighty acres, and the dwelling and appurtenances thereon, to be selected by the owner thereof, and not in any city, town, or village, or in lieu thereof, at the option of the owner; any lot in the

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May not be claimed against judgment for a penalty imposed by statute.—Williams v. Bowden, 69 Ala., 433.

Nor against lien on personal property created by contract to secure a debt.—Brown v. Coats. 56 Ala., 439.

Nor against statutory lien for rent.—Ex parte Barnes, 84 Ala., 540.

Nor against claim by State for defalcation.—Vincent v. State, 74 Ala., 274.

Nor against judgment for tort.—Meredith v. Holmes, 68 Ala., 190; Vincent v. State, 74 Ala., 274; Wright v. Jones, 103 Ala., 539.

Nor by executor against liability for a devastavit.—Dangaix v. Lunsford, 112 Ala., 403.

Nor against judgment for damages in detinue.—Stuckey v. McKibbon, 92 Ala., 622 (limiting Clingman v. Kemp, 57 Ala., 195).

Double exemption not allowed; when may be claimed a second time.—Weis v. Levy, 69 Ala., 209.

When money in the hands of a garnishee is claimed the claim must be filed before judgment of condemnation.—Randolph v. Little, 62 Ala., 396 (overruling Webb v. Edwards, 46 Ala., 17); Roden v. Brown, 103 Ala., 324.

[SEC. 205.]—

Legislature may increase constitutional exemptions but may not diminish them; self-executing.—Miller v. Marx, 55 Ala., 322; David v. David, 56 Ala., 49.

Must be liberally construed in favor of the exemption.—McGuire v. Van Pelt, 55 Ala., 344; Webber v. Short, 55 Ala., 311; Kennedy v. First Nat'l Bank, 107 Ala., 170.

Limited to debts contracted after the adoption of the Constitution.—Miller v. Marx, 55 Ala., 322; Preiss v. Campbell, 59 Ala., 635.

Essentials to, and extent of homestead; protection is only extended to residents; and only covers land owned, used and actually occupied, as a home dwelling-place, family seat, mansion.—Koster v. McWilliams, 41 Ala., 302; McGuire v. Van Pelt, 55 Ala., 344; McConnaughy v. Baxter, 55 Ala., 379; Chambers v. McPhaul, 55 Ala., 367; David v. David, 56 Ala., 49; Dexter v. Strobach, 56 Ala., 233; Lyons v. Connor, 57 Ala., 181; Daniel v. Collins, 57 Ala., 625; Boyle v. Shulman, 59 Ala., 566; Preiss v. Campbell, 59 Ala., 635; Stow v. Little, 63 Ala., 257; Blum v. Carter, 63 Ala., 235; Martin v. Lile, 63 Ala., 406; Watts v. Gordon, 65 Ala., 546; Lehman v. Bryan, 67 Ala., 558; Talmadge v. Talmadge, 66 Ala., 199; Hudson v. Kelley, 70 Ala., 393; Lyne v. Wann, 72 Ala., 43; Scaife v. Argall, 74 Ala., 473; Murphy v. Hunt, 75 Ala., 438; Ex parte Pearson, 76 Ala., 521; Beard v. Johnson, 87 Ala., 729; Jaffrey v. McGough, 88 Ala., 648; Garrett v. Jones, 95 Ala., 96; Winston v. Hodges, 102 Ala., 304; Turner v. Turner, 107 Ala., 465.

Abandonment; temporarily leaving homestead.—McConnaughy v. Baxter, 55 Ala., 379 (overruling Milton v. Andrews, 45 Ala., 454); Boyle v. Shulman, 59 Ala., 566; Stow v. Lillie, 63 Ala., 257; Scaife v. Argall, 74 Ala., 473; Hines v. Duncan, 79 Ala., 112; Caldwell v. Pollak, 91 Ala., 353; s. c., 94 Ala., 149; Sides v. Scharff, 99 Ala., 106; Garrett v. Jones, 95 Ala., 96; Fuller v. Whitlock, 99 Ala., 411; Metcalf v. Smith, 106 Ala., 301; Herzfeld v. Beasley, 106 Ala., 447; Blackman v. Moore-Handley Hdw. Co., 106 Ala., 458; Turner v. Turner, 107 Ala., 465.

The quantum or quality of the estate or interest is unimportant, if required conditions prevail; exemption may be claimed in leased premises.—McGuire v. Van Pelt, 55 Ala., 344 (doubting Pizzala v. Campbell, 46 Ala., 35); Webber v. Short, 55 Ala., 311; Chambers v. McPhaul, 55 Ala., 367; Watts v. Gordon, 65 Ala., 546; Tyler v. Jewett, 82 Ala., 93; Winston v. Hodges, 102 Ala., 304.

But it is governed and controlled by the law in force at the creation of the debt.—Miller v. Marx, 55 Ala., 322; Watts v. Barnett, 56 Ala., 340; Wilson v. Brown, 58 Ala., 62; Horn v. Wiatt, 60 Ala., 297; Nelson v. McCrary, 60 Ala., 301; Johnson v. Murphy, 60 Ala., 288; Garner v. Bond, 61 Ala., 84; Hardy v. Sulzbacher, 62 Ala., 44; Blum v. Carter, 63 Ala., 235; Smith v. Cockrell, 66 Ala., 64; Carr v. Shackelford, 68 Ala., 241; Slaughter v. McBride, 69 Ala., 510; Peevey v. Cabaniss, 70 Ala., 253; Cochran v. Miller, 74 Ala., 50; DeGraffenreid v. Clark, 75 Ala., 425; Clark v. Spencer, 75 Ala., 49; Paull v. McLeod, 76 Ala., 418.

Selection; when necessary; homestead in several detached parcels of land.—Andrews v. Milton, 51 Ala., 400; Hardy v. Sulzbacher, 62 Ala., 44; DeGraffenreid v. Clark, 75 Ala., 425; Dicus v. Hall, 83 Ala., 459; Beard v. Robinson, 87 Ala., 729; Jaffrey v. McGough, 88 Ala., 648;

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town or village, with the dwelling and appurtenances thereon owned and occupied by any resident of this State, and not exceeding the value of two thousand dollars, shall be exempt from sale on execution or any other process from a court; for any debt contracted since the thirteenth day of July, eighteen hundred and sixty-eight,

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city, town, or village, with the dwelling and appurtenances thereon, owned and occupied by any resident of this State, and not exceeding the value of two thousand dollars, shall be exempted from sale on execution, or any other process from a court, for any debt contracted since the thirteenth day of July, eighteen hundred

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Alford v. Alford, 88 Ala., 656; Pollock v. McNeil, 100 Ala., 203; Shubert v. Winston, 95 Ala., 159; Hodge v. Winston, 95 Ala., 514; s. c., 102 Ala., 304; Kennedy v. Bank, 107 Ala., 170; Turner v. Turner, 107 Ala., 465.

It is legally impossible for two homesteads of the same person to coexist.—Boyle v. Shulman, 59 Ala., 569; Woodstock I. Co. v. Richardson, 94 Ala., 629.

The limitation of two thousand dollars extends to the country.—Miller v. Marx, 55 Ala., 322. If proper conditions concur, a married woman may claim homestead in her separate estate.—Bender v. Meyer, 55 Ala., 576; Weiner v. Sterling, 61 Ala., 98; Beard v. Johnson, 87 Ala., 729.

Fraudulent grantor may claim in land, the deed to which has been annulled at the suit of creditors.—Fellows v. Lewis, 65 Ala., 343; Smith v. Cockrell, 66 Ala., 64; Kennedy v. Bank, 107 Ala., 170.

And so, in land, pending a direct proceeding to condemn it.—Randolph v. Little, 62 Ala., 396; Sherry v. Brown, 66 Ala., 51; Stanley v. Ehrman, 83 Ala., 215; Kennedy v. Bank, 107 Ala., 170.

Cannot be so asserted as to disturb valid liens.—Blum v. Carter, 63 Ala., 235; Newbold v. Smart, 67 Ala., 326; Ross v. Perry, 105 Ala., 533.

Meaning of "debts contracted;" cannot be claimed when judgment is in tort.—Meredith v. Holmes, 68 Ala., 190; Williams v. Bowden, 69 Ala., 433; Vincent v. State, 74 Ala., 274; Wright v. Jones, 103 Ala., 539.

Law conferring exemption must be of force when it is claimed.—Nelson v. McCrary, 60 Ala., 301; Lovelace v. Webb, 62 Ala., 271; Clark v. Snodgrass, 66 Ala., 233.

Alienation: Since the Constitution of 1868 a mortgage, or other conveyance of the homestead, without the voluntary signature and assent of the wife, is inoperative.—Miller v. Marx, 55 Ala., 322; Peters v. McKinney, 56 Ala., 41; McGuire v. Van Pelt, 55 Ala., 344; Balkum v. Wood, 58 Ala., 642; Halso v. Seawright, 65 Ala., 431; Seaman v. Nolen, 68 Ala., 463; Slaughter v. McBride, 69 Ala., 510; DeGraffenreid v. Clark, 75 Ala., 425; Alford v. Lehman, 76 Ala., 526; Watson v. Mansill, 76 Ala., 600; Crim v. Nelms, 78 Ala., 604; Strauss v. Harrison, 79 Ala., 324; Moses v. McLain, 82 Ala., 370; Smith v. Pearce, 85 Ala., 264; Cox v. Holcomb, 87 Ala., 589; Griffith v. Ventress, 91 Ala., 366; Hodges v. Winston, 95 Ala., 514; Woodstock I. Co. v. Richardson, 94 Ala., 629; Parks v. Barnett, 104 Ala., 438.

Though the wife be insane.—Thompson v. N. E. Mrtg. Sec. Co., 110 Ala., 400.

Prior to 1873, if the wife join in the execution of a conveyance, and it was regularly executed as other conveyances, the homestead passed.—Miller v. Marx, 55 Ala., 322; Lyons v. Connor, 57 Ala., 181; Preiss v. Campbell, 59 Ala., 635; Cahall v. Cit. Mut. Bldg. Assn., 61 Ala., 232; Forsyth v. Preer, 62 Ala., 443; Rogers v. Adams, 66 Ala., 600; Scott v. Simons 70 Ala., 352; Butts v. Broughton, 72 Ala., 294; Jones v. Roper, 86 Ala., 210.

Since 1873 the form then prescribed must be regarded as a negation of all other methods of alienation and must be followed.—Scott v. Simons, 70 Ala., 352.

But the requirement applies only to conveyances perfected by delivery.—Jenkins v. Harrison, 66 Ala., 345.

Separate examination of wife not essential to convey her separate estate.—Weiner v. Sterling, 61 Ala., 98; Dawson v. Burruss, 73 Ala., 111.

Voluntary signature and assent is all that is required; wife need not be named as grantor if she joins in power of sale in a mortgage.—Dooley v. Villalonga, 61 Ala., 129; Hood v. Powell, 73 Ala., 171; Shelton v. Aultman, 82 Ala., 315.

A deed or mortgage, inoperative to pass the homestead, if regularly executed passes any excess above homestead that may be described.—Miller v. Marx, 55 Ala., 322; McGuire v. Van Pelt, 55 Ala., 344; Pettus v. McKinney, 56 Ala., 41; Barner v. Bond, 61 Ala., 84; Snedecor v. Freeman, 71 Ala., 140; DeGraffenreid v. Clark, 75 Ala., 425.

But if wife joins "solely for the purpose of releasing dower" the homestead will not pass, although the acknowledgement is sufficient.—Thompson v. Sheppard, 85 Ala., 611.

Sufficiency of certificate showing "voluntary signature and assent."—Scott v. Simons, 70 Ala., 352; Motes v. Carter, 73 Ala., 553.

Acknowledgement may be after execution, but not so as to affect intervening rights.—Cahall v. Cit. Mut. Bldg. Assn., 61 Ala., 232; Hood v. Powell, 73 Ala., 171; Winston v. Hodges, 102 Ala., 304.

But not after the death of the husband.—Richardson v. Woodstock I. Co., 90 Ala., 266; s. c., 94 Ala., 629; Hodges v. Winston, 95 Ala., 514; Parks v. Barnett, 104 Ala., 438.

Nor after sale under execution.—Smith v. Pearce, 85 Ala., 264.

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or after the ratification of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage or other alienation of said homestead by the owner therof, if a married man, shall not be valid without the voluntary signature and assent of the wife to the same.

SEC. 206. The homestead of a family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted since the thirteenth day of July, Eighteen hundred and sixty-eight, or after the ratification of this Constitution, in all cases, during the minority of the children.

SEC. 207. The provisions of Sections 204 and 205 of this Constitution shall not be so construed as to prevent a laborers' lien for work done and performed for the person claiming such exemption, or a mechanics' lien for work done on the premises.

SEC 208. If the owner of a homestead die, leaving a widow, but no children,

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and sixty-eight, or after the ratification of this Constitution. Such exemption, however, shall not extend to any mortgage lawfully obtained, but such mortgage or other alienation of such homestead, by the owner thereof, if a married man, shall not be valid without the voluntary signature and assent of the wife to the same.

SEC. 3. The homestead of the family, after the death of the owner thereof, shall be exempt from the payment of any debts contracted since the thirteenth day of July, one thousand eight hundred and sixty-eight, or after the ratification of this Constitution, in all cases, during the minority of the children.

SEC. 4. The provisions of Sections one and two of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming such exemption, or a mechanic's lien for work done on the premises.

SEC. 5. If the owner of a homestead die, leaving a widow, but no children,

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Under Constitution of 1868, if homestead was a lot in a town worth over two thousand dollars, and incapable of reduction, there was no exemption and no restraint on its alienation.—Miller v. Marx, 55 Ala., 322; Watts v. Barnett, 56 Ala., 340; Garner v. Bond, 61 Ala., 84.

A conveyance of the homestead by the husband, direct to the wife, is not void, but passes the legal title, subject to all pre-existing homestead rights.—Turner v. Bernheimer, 95 Ala., 241.

Conveyance of right of way over homestead invalid unless wife joins.—McGhee v. Wilson, 111 Ala., 615.

[SEC. 206.]—

It is the actual homestead at the time of the death which is exempt; other land cannot be selected.—Chambers v. McPhaul, 55 Ala., 367; David v. David, 56 Ala., 49; Turner v. Turner, 107 Ala., 465.

May be claimed in property purchased with declared intention of using it as a homestead, but the use of which was prevented by death.—Englehardt v. Yung, 76 Ala., 534.

For the benefit of actual residence; widow must be resident at the time of husband's death.—Allen v. Manasses, 4 Ala., 544; Ex parte Pearson, 76 Ala., 521.

Exemption free from administration; vests at death of owner; continues during life of widow and minority of children and then reverts.—Webber v. Short, 55 Ala., 311; Miller v. Marx, 55 Ala., 322; Hunter v. Law, 68 Ala., 365; Barber v. Williams, 74 Ala., 331; Norton v. Norton, 94 Ala., 481; Cofer v. Scroggins, 98 Ala., 342.

Equitable title sufficient.—Munchus v. Harris, 69 Ala., 506.

Cannot be cut off by attempted disposition by will.—Bell v. Bell, 84 Ala., 64.

Adopted child entitled to exemption.—Cofer v. Scroggins, 98 Ala., 342.

The fact that a widow has a separate estate does not lessen her right.—Darden v. Reese, 62 Ala., 311.

Exemption takes effect at the death of owner of homestead and is controlled by the then law; the quantity is controlled by the law of force at the creation of the debt.—Taylor v. Pettus, 52 Ala., 287; Taylor v. Taylor, 53 Ala., 135; Rottenberry v. Pipes, 53 Ala., 447; Miller v. Marx, 55 Ala., 322; Davis v. Davis, 63 Ala., 293; Slaughter v. McBride, 69 Ala., 510; Skinner v. Chapman, 78 Ala., 376; McDonald v. Berry, 90 Ala., 464.

Gives a mere right to occupy, without power to convey or charge; at death of widow reverts to estate of owner.—Miller v. Marx, 55 Ala., 322; Barber v. Williams, 74 Ala., 331.

Attempted alienation as an abandonment.—Barber v. Williams, 74 Ala., 331.

Exemption is in the actual homestead; if that is leased merely, or mortgaged, other property cannot be selected.—Chambers v. McPhaul, 55 Ala., 367. See also Citations to Art. X., Sec 3.

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such homestead shall be exempt, and the rents and profits thereof shall inure to her benefit.

SEC. 209. The real and personal property of any female in this State, acquired before marriage, and all property, real and personal, to which she may afterwards be entitled by gift, grant, inheritance or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, obligations or engagements of her husband, and may be devised or bequeathed by her, the same as if she were a *feme sole.*

SEC. 210. The right of exemption hereinbefore secured may be waived by an instrument in writing, and when such waiver relates to realty, the instrument must be signed by both the husband and the wife, and attested by one witness.

## ARTICLE XI.

TAXATION.

SEC. 211. All taxes levied on prop-

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such homestead shall be exempt, and the rents and profits thereof shall enure to her benefit.

SEC. 6. The real and personal property of any female in this State, acquired before marriage, and all property, real and personal, to which she may afterwards be entitled by gift, grant, inheritance, or devise, shall be and remain the separate estate and property of such female, and shall not be liable for any debts, obligations and engagements of her husband, and may be devised or bequeathed by her, the same as if she were a *femme sole.*

SEC. 7. The right of exemptions hereinbefore secured may be waived by an instrument in writing, and when such waiver relates to realty, the instrument must be signed by both the husband and the wife, and attested by one witness.

## ARTICLE XI.

TAXATION.

SECTION 1. All taxes levied on prop-

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[SEC. 209.]—

Abrogates the right of married woman to disaffirm at any time a purchase of property made by her.—McAnally v. Heflin, 105 Ala., 525.

If not induced by improper influence, an absolute conveyance of the wife's land in payment of her husband's debt is valid.—Perryman v. Greer, 39 Ala., 133; Holt v. Agnew, 67 Ala., 360; Hubbard v. Sayre, 105 Ala., 440; Giddens v. Powell, 108 Ala., 621.

Married woman may enter into business partnership with her husband.—Leinkauff v. Frenkle, 80 Ala., 136; LeGrand v. Eufaula Nat. Bank, 81 Ala., 123; Rabbitte v. Orr, 83 Ala., 185; Schlapback v. Long, 90 Ala., 525; Belser v. Tuscumbia Banking Co., 105 Ala., 514.

But may not become surety for her husband; mortgage of wife's land to secure husband's debt not binding.—Steed v. Knowles, 79 Ala., 446; Heard v. Hicks, 82 Ala., 484; Union Nat. Bank v. Hartwell, 84 Ala., 379; Lansden v. Bone, 90 Ala., 446; Vincent v. Walker, 93 Ala., 165; Schening v. Cofer, 97 Ala., 726; McNeil v. Davis, 105 Ala., 657.

The husband is still the head of the household as at common law.—Strouse v. Leipf, 101 Ala., 433.

[SEC. 210.]—

Exemption of personal property could be waived by stipulation in a note prior to Constitution.—Brown v. Leitch, 60 Ala., 313.

Waiver must be in writing and the intention clear.—Knox v. Wilson, 77 Ala., 309.

Waiver of exemptions as to personalty may be expressed in any written contract; if of the homestead it must be by separate instrument.—Neely v. Henry, 63 Ala., 261; Terrell v. Hurst, 76 Ala., 588; Wagnon v. Keenan, 77 Ala., 519; Agnew v. Walden, 95 Ala., 108; Reed Lumber Co. v. Lewis, 94 Ala., 626.

If waiver only as to part of exempt property such part must be specified; not so if general. Neely v. Henry, 63 Ala., 261.

Waiver in partnership note operates to waive the individual exemptions in personalty of the partner executing the note; but not of the other partner unless signor was specially authorized.—Terrell v. Hurst, 76 Ala., 588; Reed Lumber Co. v. Lewis, 94 Ala., 626.

Law prohibiting garnishments except where exemptions are waived and the debt was contracted for necessaries not a restraint on the right to waive.—Adams v. Creen, 100 Ala., 218.

A note waiving exemptions is a mere engagement and does not create a lien on property.—Craft v. Stoutz, 95 Ala., 245.

And is ineffectual as against the widow and minor children of the deceased maker.—Wiggins v. Mertins, 111 Ala., 164.

[SEC. 211.]—

As tax is essential to the existence of the Government, there is scarcely no limitation to the power. The structure of the Government itself is the only security against its abuse; that is, that the Legislator must tax his constituents, and the influence the con-

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erty in this State shall be assessed in exact proportion to the value of such prop-

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erty in this State shall be assessed in exact proportion to the value of such

stituents have over the Representative is the only guard against the abuse. The judicial department of the Government cannot inquire as to the degree of the legitimate taxation or what degree may amount to an abuse of the power.—Kirtland v. Hotchkiss, 100 U. S., 491; McCulloch v. Maryland, 4 Wheat., 316.

Classes of property as well as classes of persons may be exempt from taxation, but the Legislature must determine for itself what shall be exempt; the county or municipality cannot make the selection.—Farnsworth v. Lisbon, 62 Me., 451; State v. Hudson, 37 N. J., 11; State v. Parker, 33 N. J., 213; State v. County Court, 19 Ark., 360.

But taxes can only be levied for public purposes, and not for private purposes.—Freeland v. Hastings, 100 Allen, 570; Weismer v. Douglass, 64 N. Y., 91; (21 Am. Rep., 588.)

The Constitution requires that taxes must be equal and uniform, but it does not require uniformity as to all modes of taxation; it only requires that the same apportionment as to each mode of taxation; so the taxing district must be uniform so that the taxes will fall upon those who are equally benefited by the expenditure. It has been held unlawful for the Legislature to extend the limits of a city so as to include farming lands, and thus increase the revenue of the city.—Arbegust v. Louisville, 2 Bush, 271; Swift v. Newport, 7 Bush, 37; Fulton v. Davenport, 17 Iowa, 404; Bradshaw v. Omaha, 1 Neb., 16; but the case of Stilts v. Indianapolis, 55 Ind., 515; and Martin v. Dix, 52 Miss., 53 (s.c., 24 Am. Rep., 66) holds the contrary.

The power of taxation is an inherent power possessed by all governments and every sovereign. A tax is a charge made by the Government upon the persons, property, rights and privileges of the people for public purposes; it is a forced contribution to the support of the Government. Taxes may be in the form of duties, imposts, excises, and taxes of the Federal Government is confined to these. Duties and imposts are taxes levied upon importations and products in this country; excises are taxes upon the manufacture and sale of merchandise, or upon the right to follow certain occupations, and upon the right to exercise certain franchises or privileges. The Federal Government can levy direct taxes, subject to the limitation that they must be apportioned among the several States according to the representative population.—Hylton v. U. S., 3 Dall., 171; Pac. Ins. Co. v. Soule, 7 Wall., 433; 8 Wall., 533; 192 Ala., 586.

"Taxes" and "taxation" have respectively the same meaning in this article.—Mayor v. Klein, 89 Ala., 461.

The right to tax is a limitation, not a grant of power.—Dorman v. State, 34 Ala., 216; Irwin v. Mobile, 57 Ala., 6; Schultes v. Eberly, 82 Ala., 242; Mayor v. Klein, 89 Ala., 461; Elyton Land Co. v. Mayor, 89 Ala., 477.

Article intended to provide for, regulate and limit only general taxation for general government purposes, State, county and municipal. —Mayor v. Klein, 89 Ala., 461.

All taxation must be in proportion to value, but approximate equality is sufficient.—Mayor v. Stonewall Ins. Co., 53 Ala., 570; Board v. A. C. R. Co., 59 Ala., 551; Board of Rev. v. Mont. Gas L. Co., 64 Ala., 269; Moog v. Randolph, 77 Ala., 597, Elyton Land Co. v. Mayor, 89 Ala., 477; State Bank v. Board of Rev., 91 Ala., 217.

Not to be construed to prohibit exemptions from taxation; nor a reasonable classification, nor to require the taxation of all property at precisely the same rate.—M. & G. R. Co., v. Peebles, 47 Ala., 317; S. & N. R. Co. v. Morris, 65 Ala., 193; Mayor v. Stonewall Ins. Co., 53 Ala., 570; Clark v. Mobile, 67 Ala., 217; Dauphin St. Ry. Co. v. Kennedy, 74 Ala., 583; Moog v. Randolph, 77 Ala., 597; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala., 273; State Bank v. Bd. Rev., 91 Ala., 217.

Cannot prescribe or declare an arbitrary or artificial value under the guise of classification; taxation must not be spoilation.—Assmt. Bd. v. A. C. R. Co., 59 Ala., 551; Moog v. Randolph, 77 Ala., 597.

Has no application to local assessments for local street improvement, as paving; such power is referable to the general inherent power of taxation, not here limited or restrained.—Irwin v. Mobile, 57 Ala., 6; Mayor v. Klein, 89 Ala., 461 (overruling Mobile v. Dargan, 45 Ala., 310, and Mobile v. Royal St. Ry., 45 Ala., 322).

Income, salaries, etc.—Lott v. Hubbard, 44 Ala., 593; Board of Rev. v. Montgomery Gas L. Co., 64 Ala., 269.

Does not forbid taxation of credits secured by mortgages on property which is also taxed. —Ala. Gold Life Ins. Co. v. Lott, 54 Ala., 499.

Shares of capital stock of a corporation being assessed does not prevent land owned by such corporation being taxed.—Jefferson Co. Bank v. Hewitt, 112 Ala., 546.

Uniformity consists in the imposition of like taxes upon all who are subject to it.—Phœnix Co. v. State, 118 Ala., 143.

Occupations and property are legitimate objects of taxation. Constitutional provisions regulating one do not affect the other.—Phœnix Co. v. State, 118 Ala., 143.

Taxation so far as it is not restrained by the Constitution is a legislative power and cannot be controlled by the judiciary.—Phœnix Co. v. State, 118 Ala., 143.

This section relates to direct taxes on property.—Phœnix Co. v. State, 118 Ala., 143.

But property in this sense is not all the object and subject of taxation.—Phœnix Co. v. State, 118 Ala., 143.

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erty, but no tax shall be assessed upon any debt for rent or hire of real or personal property, while owned by the land-

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property; *Provided, however*, the General Assembly may levy a poll-tax, not to exceed one dollar and fifty cents on

The test is whether the tax is upon the capital stock eo nomine, regardless of its value or at its assessed valuation; if the former, it is a franchise tax; if the latter, it is a property tax.—Phœnix Co. v. State, 118 Ala., 143; State v. Stonewall Co., 89 Ala., 338.

The Legislature may impose direct taxes on lands only; or it may impose direct taxes on personalty only. It is within the legislative power to say what property is the better able to bear the burden of taxation.—Phœnix Co. v. State, 118 Ala., 143.

And what is true of property is true of occupations and privileges also.—*Ib.*

A tax levied upon business regulated by the amount of gross receipts is a privilege tax, and is not unconstitutional.—Capital Co. v. Board of Montgomery Co., 117 Ala., 303.

Constitution contains no restrictions on power of Legislature to levy taxes on anything except property.—State v. Street, 117 Ala., 203.

An act providing for the levy of a special tax for the benefit of public roads, in a stated and fixed amount upon all vehicles, irrespective of their value, is unconstitutional.—Smith v. Commissioners, 117 Ala., 196.

It is not within the the legislative power to direct the levy and collection of a poll tax, in any other manner or for other purpose than provided in the Constitution.—Francis v. Peevey, 132 Ala., 58.

Constitution is mandatory.—*Ib.*

This provision, as a general rule, applies to property, but not to privileges or occupations.—Phœnix Co. v. State, 118 Ala., 143.

A provision contained in the charter of a corporation exempting it from taxation, obtained under the Constitution of 1819, is a contract, the obligation of which cannot be impaired by subsequent laws taxing the property. But this rule was changed by the Constitutions of 1868, 1875 and 1901 to the extent that the Legislature might subsequently alter the charter for the public good.—State v. Ala. Society, 134 Ala., 634; Dartmouth Col. v. Woodward, 4 Wheat., 518; Ala. Co. v. Burkett, 46 Ala., 569; Tuscaloosa Co. v. Green, 48 Ala., 346.

Unless the charter provides otherwise, or the Constitution authorizes or prohibits, charters of corporations are contracts within the protection of the Constitution.—State v. Ala. Society, 134 Ala., 634; Mayor v. Ins. Co., 53 Ala., 570; Hare v. Kennerly, 83 Ala., 608.

Where the title of an act was "An Act to amend Secs. 8 and 10 of an act to create a Board of Education and prescribe the powers of the same," will not authorize a provision for the levy of a tax of $0.20 on $100.00 worth of property by said city.—State v. So. Ry., 115 Ala., 250.

The provision as to uniformity of taxation does not apply to privilege or occupation taxes; it applies only to property taxes.—Phœnix Co. v. Fire Dept., 117 Ala., 631.

Constitutional provisions as to taxation are not grants, but limitations upon the power to tax. There are three classes of taxation: First, State taxes; second, county taxes; and third, municipal taxes.—State v. Street, 117 Ala., 203.

Counties and municipalities have no inherent power of taxation like the State; their power is derived from the Legislature. This is in no sense a constitutional power.—State v. Street, 117 Ala., 209; Hare v. Kennerly, 83 Ala., 608.

The Legislature has plenary power in the levy of taxes, except as to taxes upon the property as such.—Cap. Co. v. Bd. of Rev., 117 Ala., 303.

A tax upon the gross receipts of a business, after deducting the expenses, is an occupation or privilege tax, and not a tax upon the property. As to such tax the Legislature has plenary power.—Cap. Co. v. Bd. of Rev., 117 Ala., 303; McClellan and Head, J. J., dissenting.

As to occupation or privilege taxes, the mode in which the tax shall be exercised is a question for the Legislature and not for the court.—Cap. Co. v. Bd. of Rev., 117 Ala., 303.

Privilege or license tax may be graded according to the amount of stock employed or business done, Saks v. Mayor, 120 Ala., 190; McClellan, J., dissenting, holding that an ordinance tax is a tax upon property.

A municipal license tax upon nonresident brokers, to sell by sample, is unconstitutional.—Stratford v. City of Mont., 110 Ala., 619.

A statute fixing the amount of taxes upon wagons or other vehicles, irrespective of their value, is in violation of the Constitution.—Smith v. Commissioners of Marshall Co., 117 Ala., 196.

The test whether a tax is upon capital stock without regard to value, or upon its assessed valuation, is whether it is a franchise tax or whether a tax upon the property.—Phœnix Co. v. State, 118 Ala., 151; State v. Stonewall Ins. Co., 89 Ala., 338.

A franchise tax may be imposed at the will of the Legislature.—Phœnix Co. v. State, 118 Ala., 151; 4 Pet., 514; Burrows on Taxation, Sec. 85.

The State may select for taxation certain classes and leave other classes untaxed, and there is no restriction on the power of choice, unless the Constitution imposes it; this is true of property, privilege, occupation or license taxes.—Cooley on Taxation, 570.

The amount of taxes authorized by the Constitution has no reference to specific taxes, such as occupation, privilege and franchise taxes, or the power to license occupations.—Gold-

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lord or hirer during the current year of such rental or hire, if such real or personal property be assessed at its full value.

SEC. 212. The power to levy taxes shall not be delegated to individuals or private corporations or associations.

SEC. 213. After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, except to repel invasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each House of the Legislature, and the vote shall be taken by yeas and nays and entered on the Journals; and any act creating or incurring any new debt against this State, except as herein provided for, shall be absolutely void; provided, the Governor may be authorized to negotiate temporary loans, never to exceed three hundred thousand dollars, to meet the deficiencies in the Treasury, and until the same is paid no new loan shall be negotiated; provided further, that this section shall not be so construed as to prevent the issuance of bonds for the purpose of refunding the existing bonded indebtedness of the State.

SEC. 214. The Legislature shall not have the power to levy in any one year

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each poll, which shall be applied exclusively in aid of the public school fund in the county so paying the same.

SEC. 2. No power to levy taxes shall be delegated to individuals or private corporations.

SEC. 3. After the ratification of this Constitution, no new debt shall be created against, or incurred by this State, or its authority, except to repel invasion or suppress insurrection, and then only by a concurrence of two-thirds of the members of each House of the General Assembly, and the vote shall be taken by yeas and nays and entered on the Journals; and any act creating or incurring any new debt against this State, except as herein provided for, shall be absolutely void; *Provided,* the Governor may be authorized to negotiate temporary loans, never to exceed one hundred thousand dollars, to meet deficiencies in the treasury; and until the same is paid, no new loan shall be negotiated; *Provided, further,* that this section shall not be so construed as to prevent the issuance of bonds in adjustment of existing State indebtedness.

SEC. 4. The General Assembly shall not have the power to levy, in any one

smith v. Huntsville, 120 Ala., 184; City of Montgomery *in re* Knox, 64 Ala., 463; Wes. Un. Co. v. State Bd., 80 Ala., 273; Cap. Co. v. Bd. of Rev., 117 Ala., 303; Anniston v. So. Ry. Co., 112 Ala., 557.

A tax on the gross amount of sales or business done is not a tax on the goods or property, but is an occupation or privilege tax.—120 Ala., 184.

Statutes authorizing cities to pave sidewalks and streets and to make assessments against abutting property therefor are not in violation of the Bill of rights.—Montgomery v. Birdsong, 126 Ala., 633.

If they require compensation to be made or secured, though it is in the way of betterment or improvement of the property, but the exaction from the owner of an amount in substantial excess of the benefits accrued from them would be, to the extent of such excess, a taking under the guise of taxation and without compensation, and therefore in violation of the Bill of Rights.—Norwood v. Baker, 172 U. S., 269; Mayor v. Klein, 89 Ala., 461.

[SEC. 212.]—

Power can only be delegated to counties and municipal corporations.—President v. Board of Improvement, 45 Ala., 399; Clark v. Mobile, 67 Ala., 17; Schultes v. Eberly, 82 Ala., 242; Spigener v. Rives, 104 Ala., 437.

A city ordinance, providing that persons engaged in certain business shall pay a tax according to a schedule, regulating the amount of tax by amount of business, is a privilege tax, and constitutional.—Goldsmith v. Huntsville, 120 Ala., 182; Saks v. Mayor of Birmingham, 120 Ala., 190.

The amount of tax authorized by the Constitution to be levied upon property, real and personal, has no reference to specific taxes which may be imposed on occupations and privileges; and the power to tax occupations and privileges includes the power to license them.—Ex parte Montgomery, 64 Ala., 463; W. U. T. Co. v. State Board, 80 Ala., 273; Cap. City Works v. Board of Rev., 117 Ala., 303; City of Anniston v. So. Ry. Co., 112 Ala., 557.

[SEC. 214.]—

Limitation applies only to State taxes levied for State purposes.—Hare v. Kennerly, 83 Ala., 608.

The term "taxable property," as here used, does not include all the subjects of taxation; it shows that which is made, not which the

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a greater rate of taxation than sixty-five one-hundredths of one per centum on the value of the taxable property within this State.

SEC. 215. No county in this State shall be authorized to levy a greater rate of taxation in any one year on the value of the taxable property therein than one-half of one per centum; provided, that to pay debts existing on the sixth day of December, eighteen hundred and seventy-five, an additional rate of one-fourth of one per centum may be levied and collected which shall be appropriated exclusively to the payment of such debts and the interest thereon; provided further, that to pay any debt or liability now existing

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year, a greater rate of taxation than three-fourths of one per centum on the value of the taxable property within this State.

SEC. 5. No county in this State shall be authorized to levy a larger rate of taxation, in any one year, on the value of the taxable property therein, than one-half of one per centum. *Provided,* that to pay debts existing at the ratification of this Constitution, an additional rate of one-fourth of one per centum may be levied and collected which shall be exclusively appropriated to the payment of such debts or the interest thereon. *Provided further,* that to pay any debt or liability now existing against any county,

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Legislature may make, liable.—Lott v. Rose, 38 Ala., 156; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala., 273; Capital City Water Co. v. Bd. of Rev., 117 Ala., 303.

A distinction is made between the taxation of property, as such, and a license or privilege tax; a business is not "taxable property" as here meant.—W. U. Tel. Co. v. State Bd. Assmt., 80 Ala., 273; Anniston v. So. Ry. Co., 112 Ala., 557; Capital City Water Co. v. Bd. Rev., 117 Ala., 303.

Cannot levy for several years' past taxes, to be paid at one time, exceeding the limit; this is not an assessment of escaped taxes.—Maguire v. Board of Rev., 71 Ala., 401.

[SEC. 215.]—

Limitation applies only to county taxes levied for county purposes.—Hare v. Kennerly, 83 Ala., 608.

A railroad bridge to be used and operated by a private corporation is not such a bridge as for the erection of which a special tax may be levied by a county.—Garland v. Board of Rev., 87 Ala., 223.

Law authorizing a county to levy a special tax on a proposed "stock district," to be used in fencing it is constitutional.—Spigener v. Rives, 104 Ala., 437.

Constitution allows General Assembly to levy direct taxes on property to an amount of not more than one-half of one per centum.—Phœnix Co. v. State, 118 Ala., 143.

Counties have no inherent power of taxation, and must have express sanction of law for the taxes they demand.—Phœnix Co. v. State, 118 Ala., 143.

County has no inherent power of taxation.—State v. Street, 117 Ala., 203.

The Legislature cannot limit or interfere with the fruits of this taxation.—State v. Street, 117 Ala., 203.

It is a limitation or restraint of legislative power and not of power residing in county.—State v. Street, 117 Ala., 203.

Is a grant of taxation to extent of one-half of one per centum.—State v. Street, 117 Ala., 203.

A levy of greater rate of taxation for county purposes, than one-half of one per centum is unconstitutional.—Frederick v. Northern Ala. Co., 130 Ala., 407.

Any legislative enactment authorizing greater rate of taxation than that authorized is void.—Francis v. So. R. Co., 124 Ala., 544; So. Ry. Co. v. St. Clair Co., 124 Ala., 491.

Where a levy is made under a statute authorizing the same, and no reference is made to the limit, it will be adjudged valid and within the limit unless it appears otherwise.—Francis v. So. Ry. Co., 124 Ala., 545.

A county cannot levy a greater tax than one-half of one per centum, except as and for purposes provided herein.—Francis v. So. Ry. Co., 124 Ala., 544.

Art. 1, Sec. 5 is the only limitation upon the power of the Legislature to authorize counties to levy taxes.—Keene v. Jefferson Co., 135 Ala., 465. This is changed by the Constitution of 1901.

The levy of a special and a general tax by the county cannot exceed the constitutional limit.—Frederick v. North Ala. Co., 130 Ala., 407.

The only restrictions the Constitution of 1875 imposes upon the power of taxation was, that taxes in any one year shall not exceed one-half of one per cent., except for a specified purpose.—Keene v. Jefferson Co., 135 Ala., 465.

If the levy exceeds the Constitutional restriction it is void.—Keene v. Jefferson Co., 135 Ala., 437; Francis v. So. Ry. Co., 124 Ala., 544; Ry. Co. v. St. Clair Co., 124 Ala., 491; A. G. S. R. R. Co. v. Reed, 124 Ala., 253.

A statute authorizing a county to establish a sanitary sewerage system for a part of the county, and to levy a tax therefor, is void, because an unequal tax upon all the citizens for the benefit of a few.—Keene v. Jefferson Co., 135 Ala., 465.

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against any county, incurred for the erection, construction, or maintenance of the necessary public buildings or bridges, or that may hereafter be created for the erection of necessary public buildings, bridges or roads, (*a*) any county may levy and collect such special taxes, not to exceed one-fourth of one per centum, as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected.

SEC. 216. No city, town, village or other municipal corporation, other than as provided in this article, shall levy or collect a higher rate of taxation in any one year on the property situated therein than one-half of one per centum of the value of such property as assessed for State taxation during the preceding year; provided, that for the purpose of paying debts existing on the sixth day of December, eighteen hundred and seventy-five, and the interest thereon, a tax of one per centum may be levied and collected, to be appropriated exclusively to the payment of such indebtedness; and provided further, that this section shall not apply to the city of Mobile, which city may from and after the ratification of this Constitution, levy a tax not to exceed the rate of three-fourths of one per centum to pay the expenses of the city government, and may also levy a tax not to exceed three-fourths of one per centum to pay the debt existing on the sixth day of December, eighteen hundred and seventy-five, with interest

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incurred for the erection of the necessary public buildings or other ordinary county purposes, or that may hereafter be created for the erection of necessary public buildings or bridges, any county may levy and collect such special taxes as may have been or may hereafter be authorized by law, which taxes so levied and collected shall be applied exclusively to the purposes for which the same were so levied and collected.

SEC. 7. No city, town or other municipal corporation other than provided for in this Article, shall levy or collect a larger rate of taxation, in any one year, on the property thereof, than one-half of one per centum of the value of such property, as assessed for State taxation during the preceding year; *Provided,* that for the payment of debts existing at the time of the ratification of this Constitution and the interest thereon, an additional rate of one per centum may be collected, to be applied exclusively to such indebtedness; *And provided,* this section shall not apply to the city of Mobile, which city may, until the first day of January, one thousand eight hundred and seventy-nine, levy a tax not to exceed the rate of one per centum, and from and after that time a tax not to exceed the rate of three-fourths of one per centum, to pay expenses of the city government, and may also, until the first day of January, one thousand eight hundred and seventy-nine, levy a tax not to exceed

County Commissioners exercise a discretion which cannot be controlled by judicial tribunals, except for fraud, as to the removal or furnishing Court House building.—Matkin v. Marengo Co., 134 Ala., 275.

A county cannot levy a special tax for any purpose other than those expressed in the provisions of Section 5, and if such special tax, together with the general tax, exceeds one-half of one per centum, it is void. This provision is not only a limitation upon the taxing power of the county, but is a grant of power to the extent of one-half of one per cent.—State v. Street, 117 Ala., 209; Birmingham Min. Co. v. Tuscaloosa Co., 137 Ala., 260.

(a) Acts 1903, p. 412.

[SEC. 216.]—

Intended to define the extent of direct municipal tax on property; has no reference to specific tax on privileges.—Ex parte City Council, 64 Ala., 463.

Nor on local assessments for purposes of local street improvements.—Mayor v. Klein, 89 Ala., 461.

Limits rate of taxation and makes the State assessment for the preceding year the only basis of value, regardless of any increase.—Mayor v. Klein, 89 Ala., 461; Elyton Land Co. v. Mayor, 89 Ala., 477.

Legislature has the right to levy and collect a tax on property in Mobile for the purpose of paying its debts, up to the limit here fixed.—Hare v. Kennerly, 83 Ala., 608.

License tax may be collected by a municipality, though none is collected by State.—Annis-

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thereon, or any renewal of such debt; and, provided further, that this section shall not apply to the cities of Birmingham, Huntsville and Bessemer, and the town of Andalusia, which cities and town may levy and collect a tax not to exceed one-half of one per centum in addition to the tax of one-half of one per centum as hereinbefore allowed to be levied and collected, such special tax to be applied exclusively to the payment of interest on bonds of said cities of Birmingham, Huntsville and Bessemer and town of Andalusia, respectively, heretofore issued in pursuance of law, or now authorized by law to be issued, and for a sinking fund to pay off said bonds at the maturity thereof; and provided further, that this section shall not apply to the city of Montgomery, which city shall have the right to levy and collect a tax of not exceeding one-half of one per centum per annum upon the value of the taxable property therein, as fixed for State taxation, for general purposes, and an additional tax of not exceeding three-fourths of one per centum per annum upon the value of the property therein, as fixed for State taxation, to be devoted exclusively to the payment of its public debt, interest thereon, and renewals thereof, and to the maintenance of its public schools, and public conveniences; and provided further, that this section shall not apply to Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, and Avondale, which cities and towns may from and after the ratification of

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the rate of one per centum, and from and after that time, a tax not to exceed the rate of three-fourths of one per centum, to pay existing indebtedness of said city, and the interest thereon.

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ton v. So. Ry. Co., 112 Ala., 555; Holt v. Birmingham, 111 Ala., 369.

The levy of a tax by the State for municipal purposes, which the municipality cannot levy is violative of this proivsion.—State v. So. Ry. Co., 115 Ala., 250.

The Constitution applies with equal force as a prohibition against the levy and collection of such a tax, whether by the State, city or municipality.—Elyton Land Co. v. Mayor, etc., 89 Ala., 477; Hare v. Kennerly, 83 Ala., 608; Schultes v. Eberly, 82 Ala., 246; State v. So. Ry. Co., 115 Ala., 250.

Where taxes are proposed to be levied for two purposes, in addition to the regular rate authorized, there should be two submissions to the voters.—Woodlawn v. Cain, 135 Ala., 369.

Where tax proposed to be levied under this section is for two or more purposes, the propositions embodying the purposes should be separately submitted to the voters, so the voters may express their wishes separately as to each proposition.—Town of Woodlawn v. Cain, 135 Ala., 369; Maybin v. Biloxi, 28 So., 566.

A statute authorizing a municipality to levy a special tax of $0.20 on $100.00 worth of property for educational purposes is in violation of this section of the Constitution.—State v. So. Ry., 115 Ala., 250.

A statute submitting two questions to be voted upon by the same ballot, where the voter is required to assent to both purposes or dissent from both, but is unable to choose between, the statute is void.—Woodlawn v. Cain, 135 Ala., 369.

this Constitution, levy and collect an additional tax of not exceeding one-half of one per centum; and provided further, that this section shall not apply to the cities of Decatur, New Decatur and Cullman, which cities may from and after the ratification of this Constitution, levy and collect an additional tax of not exceeding three-tenths of one per centum per annum; such special tax of said city of Decatur to be applied exclusively for the public schools, public school buildings, and public improvements; and such special tax of New Decatur and Cullman to be applied exclusively for educational purposes, and to be expended under their respective Boards of Public School Trustees; but this additional tax shall not be levied by Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, Avondale, Decatur, New Decatur or Cullman unless authorized by a majority vote of the qualified electors voting at a special election held for the purpose of ascertaining whether or not said tax shall be levied; and provided further, that the purposes for which such special tax is sought to be levied shall be stated in such election call, and, if authorized, the revenue derived from such special tax shall be used for no other purpose than that stated; and provided further, that the additional tax authorized to be levied by the city of Troy, when so levied and collected, shall be used exclusively in the payment of the bonds and interest coupons thereon, hereafter issued in the adjustment of the present bonded indebtedness of said city; and provided further, that the additional tax authorized to be levied and collected by the city of Attalla shall, when so levied and collected, be used exclusively in the payment of bonds to the amount of not exceeding twenty-five thousand dollars and the interest coupons thereon, hereafter to be issued in the adjustment of the present indebtedness of said city; provided further, that the governing boards of said cities, which are authorized to levy an additional tax after the holding of an election as aforesaid, are hereby authorized to provide by ordinance the necessary machinery for the holding of said election and declaring the result thereof.

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SEC. 217. The property of private corporations, associations and individuals of this State shall forever be taxed at the same rate; provided, this section shall not apply to institutions devoted exclusively to religious, educational or charitable purposes.

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SEC. 6. The property of private corporations, associations and individuals of this State, shall forever be taxed at the same rate; *Provided,* this section shall not apply to institutions or enterprises devoted exclusively to religious, educational, or charitable purposes.

SEC. 8. At the first session of the General Assembly after the ratification of this Constitution, the salaries of the following officers shall be reduced at least twenty-five per centum, viz.: Governor, Secretary of State, State Auditor, State Treasurer, Attorney General, Superintendent of Education, Judges of the Supreme and

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[SEC. 217.]—

If a tax is imposed on a species of property, all property of that species must be taxed at the same rate, whether belonging to an individual, association of persons or a private corporation.—Mayor v. Stonewall Ins. Co., 53 Ala., 570; Board of Assmt. v. A. C. R. Co., 59 Ala., 551; Nat. Com. Bank v. Mayor, 62 Ala., 284; Sumter Co. v. Nat. Bank, 62 Ala., 464; Board of Rev. v. Montgomery Gas L. Co., 64 Ala., 269; Auditor v. Jackson Co., 65 Ala., 142; Perry Co. v. R. Co., 65 Ala., 391; Pollard v. Zuber, 65 Ala., 628; State v. Rev. Board, 73 Ala., 65; Quartlebaum v. State, 79 Ala., 1; W. U. Tel. Co. v. State Bd. Assmt., 80 Ala., 273; State Bank v. Bd. Rev., 91 Ala., 217.

Should the Legislature leave a species of property free from taxation by failure to provide machinery for assessment, the courts are powerless.—Pollard v. Zuber, 65 Ala., 628; Auditor v. Jackson Co., 65 Ala., 142; State v. Bd. Rev., 73 Ala., 65; Maguire v. Board of Revenue, 71 Ala., 401.

Taxpayer may be authorized to deduct his indebtedness from his solvent credits.—Moog v. Randolph, 77 Ala., 597; State Bank v. Bd. Rev., 91 Ala., 217.

Law requiring Auditor to assess and collect taxes on the road-bed and rolling-stock of railroad and relieving these items from county taxation, was valid.—M. & G. R. Co. v. Peebles, 47 Ala., 317.

A specific commutation granted a corporation in lieu of an ad valorem tax is void.—Mayor v. Stonewall Ins. Co., 53 Ala., 570; Sumter Co. v. Nat. Bank, 62 Ala., 464.

The word "person," in the income tax of 1867 was construed to embrace corporations.—Bd. Rev. v. Montgomery Gas L. Co., 64 Ala., 269; State v. Rev. Bd., 73 Ala., 65.

The Legislature may impose direct taxes upon land only; or it may impose direct taxes on personalty only. It is within the legislative power to say what property is the better able to bear the burdens of taxation.—Phœnix Co. v. State, 118 Ala., 143.

And what is true of property is true of occupations and privileges also.—Phœnix Co. v. State, 118 Ala., 143.

Uniformity consists in the imposition of like taxes upon all who are subject to it.—Phœnix Co. v. State, 118 Ala., 143.

Occupations and property are legitimate objects of taxation. Constitutional provisions relating to one do not affect the other.—Phœnix Co. v. State, 118 Ala., 143.

A tax upon foreign corporations doing business in this State, and regulated by the amount of capital stock, is a franchise tax.—Phœnix Co. v. State, 118 Ala., 143.

Taxation, in so far as it is not restrained by the Constitution, is a legislative power and cannot be controlled by the judiciary.—Phœnix Co. v. State, 118 Ala., 143.

This provision relates only to direct taxes on property.—Phœnix Co. v. State, 118 Ala., 143.

But property in this sense is not all the object or subject of taxation.—Phœnix Co. v. State, 118 Ala., 143.

The test is whether the tax is upon the capital stock eo nomine, regardless of its value, or at its assessed valuation; if the former, it is a franchise tax; if the latter, it is a property tax.—Phœnix Co. v. State, 118 Ala., 143; State v. Stonewall Co., 89 Ala., 338.

This provision, as a general rule, applies to property, but not to privileges or occupations.—Phœnix Co. v. State, 118 Ala., 143.

Provision places corporations on an equal footing with natural persons, and there can be no discrimination.—Phœnix Co. v. State, 118 Ala., 143.

This section of the Constitution has no relation to privilege, license or occupation taxes, or upon franchise tax of corporations.—Phœnix Co. v. State, 118 Ala., 143.

Sections 1 and 6 of Art. 11, of the Constitution, relate only to direct taxes, such as are levied and assessed, and not to privilege, license, occupation or franchise taxes.—Phœnix Co. v. State, 118 Ala., 150.

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SEC. 218. The Legislature shall not have the power to require counties or other municipal corporations to pay any charges which are now payable out of the State treasury.

SEC. 219. The Legislature may levy a tax of not more than two and one-half per centum of the value of all estates, real and personal, money, public and private securities of every kind in this State, passing from any person who may die seized and possessed thereof, or of any part of such estate, money or securities, or interest therein, transferred by the intestate laws of this State, or by will, deed, grant, bargain, sale or gift, made or intended to take effect in possession after death of the grantor, devisor, or donor, to any person or persons, bodies politic or corporate, in trust or otherwise, other than to or for the use of the father, mother, husband, wife, brothers, sisters, children or lineal descendants of the grantor, devisor, donor or intestate.

## ARTICLE XII.

### CORPORATIONS.

### *Municipal Corporations.*

SEC. 220. No person, firm, association or corporation shall be authorized or permitted to use the streets, avenues, alleys or public places of any city, town or village for the construction or operation of any public utility or private enterprise,

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Circuit Courts, and Chancellors; and after said reduction, the General Assembly shall not have the power to increase the same, except by a vote of a majority of all the members elected to each House, taken by yeas and nays, and entered on the Journals; *Provided*, this section shall not apply to any of said officers now in office.

SEC. 9. The General Assembly shall not have the power to require the counties or other municipal corporations to pay any charges which are now payable out of the State treasury.

SEC. 24. No street passenger railway shall be constructed within the limits of any city or town, without the consent of its local authorities.

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A municipality, authorized by its charter, may force property owners to contribute to the pavement of streets to the extent of benefit derived to such property from such improvement.—City of Montgomery v. Birdsong, 126 Ala., 632.

Applies only to private corporations.—Shepherd v. Dowling, 127 Ala., 1.

A power conferred by an independent and original act is a power conferred by its charter.—*Ib.*

A city charter may provide for the improvement of its streets by providing that the costs shall not exceed $4.00 per front foot, and shall not exceed the benefits accrued to the property.—Inge v. Bd. of Public Works, 135 Ala., 187.

without first obtaining the consent of the proper authorities of such city, town or village.

SEC. 221. The Legislature shall not enact any law which will permit any person, firm, corporation or association to pay a privilege, license or other tax to the State of Alabama, and relieve him or it from the payment of all other privilege and license taxes in the State.

SEC. 222. The Legislature, after the ratification of this Constitution, shall have authority to pass general laws authorizing the counties, cities, towns, villages, districts or other political subdivisions of counties to issue bonds, (*a*) but no bonds shall be issued under authority of a general law unless such issue of bonds be first authorized by a majority vote by ballot of the qualified voters of such county, city, town, village, district, or other political subdivision of a county, voting upon such proposition. The ballot used at such election shall contain the words: "For ..... bond issue," and "Against ..... bond issue" (the character of the bond to be shown in the blank space), and the voter shall indicate his choice by placing a cross mark before or after the one or the other. This section shall not apply to the renewal, refunding or reissue of bonds lawfully issued, nor to the issuance of bonds in cases where the same have been authorized by laws enacted prior to the ratification of this Constitution, nor shall this section apply to obligations incurred or bonds to be issued to procure means to pay for street and sidewalk improvements or sanitary or storm water sewers, the cost of which is to be assessed, in whole or in part, against the property abutting said improvements or drained by such sanitary or storm water sewers.

SEC. 223. No city, town or other municipality shall make any assessment for the cost of sidewalks or street paving, or for the cost of the construction of any sewers against property abutting on such street or sidewalk so paved, or drained by such sewers, in excess of the increased value of such property by reason of the special

(*a*) Acts 1903, pp. 54 and 431, and 412.

benefits derived from such improvements.

SEC. 224. No county shall become indebted in an amount including present indebtedness, greater than three and one-half per centum of the assessed value of the property therein; provided, this limitation shall not affect any existing indebtedness in excess of such three and one-half per centum, which has already been created or authorized by existing law to be created; provided, that any county which has already incurred a debt exceeding three and one-half per centum of the assessed value of the property therein, shall be authorized to incur an indebtedness of one and a half per centum of the assessed value of such property in addition to the debt already existing. Nothing herein contained shall prevent any county from issuing bonds, or other obligations, to fund or refund any indebtedness now existing or authorized by existing laws to be created.

SEC. 225. No city, town, or other municipal corporation having a population of less than six thousand, except as hereafter provided, shall become indebted in an amount including present indebtedness, exceeding five per centum of the assessed value of the property therein, except for the construction of or purchase of water works, gas or electric lighting plants, or sewerage, or for the improvement of streets, for which purposes an additional indebtedness not exceeding three per centum may be created; provided, this limitation shall not affect any debt now authorized by law to be created, nor any temporary loans to be paid within one year, made in anticipation of the collection of taxes, not exceeding one-fourth of the annual revenues of such city or town. All towns and cities having a population of six thousand or more, also Gadsden, Ensley, Decatur and New Decatur, are hereby authorized to become indebted in an amount including present indebtedness, not exceeding seven per centum of the assessed valuation of the property therein, provided that there shall not be included in the limitation of the indebtedness of such

last described cities and towns the following classes of indebtedness, to wit: temporary loans, to be paid within one year, made in anticipation of the collection of taxes, and not exceeding one-fourth of the general revenues, bonds or other obligations already issued, or which may hereafter be issued for the purpose of acquiring, providing or constructing school houses, water works and sewers; and obligations incurred and bonds issued for street or sidewalk improvements, (*a*) where the cost of the same, in whole or in part, is to be assessed against the property abutting said improvements; provided, that the proceeds of all obligations issued as herein provided, in excess of said seven per centum shall not be used for any purpose other than that for which said obligations were issued. Nothing contained in this article shall prevent the funding or refunding of existing indebtedness. This section shall not apply to the cities of Sheffield and Tuscumbia.

SEC. 226. No city, town or village, whose present indebtedness exceeds the limitation imposed by this Constitution, shall be allowed to become indebted in any further amount, except as otherwise provided in this Constitution, until such indebtedness shall be reduced within such limit; provided, however, that nothing herein contained shall prevent any municipality, except the city of Gadsden, from issuing bonds already authorized by law; provided further, that this section shall not apply to the cities of Sheffield and Tuscumbia.

SEC. 227. Any person, firm, association or corporation, who may construct or operate any public utility along or across the public streets of any city, town or village, under any privilege or franchise permitting such construction or operation, shall be liable to abutting proprietors for the actual damage done to the abutting property on account of such construction or operation.

SEC. 228. No city or town having a population of more than six thousand shall have authority to grant to any per-

(*a*) Acts 1903, p. 59.

son, firm, corporation or association the right to use its streets, avenues, alleys, or public places for the construction or operation of water works, gas works, telephone or telegraph line, electric light or power plants, steam or other heating plants, street railroads, or any other public utility, except railroads other than street railroads, for a longer period than thirty years.

SEC. 229. The Legislature shall pass no special act conferring corporate powers, but it shall pass general laws under which corporations may be organized and corporate powers obtained, subject, nevertheless, to repeal at the will of the Legislature; and shall pass general laws under which charters may be altered or amended. The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by corporations organized under the laws of this State, which shall be in proportion to the amount of capital stock; but strictly benevolent, educational or religious corporations shall not be required to pay such a tax. The charter of any corporation shall be subject to amendment, alteration or repeal under general laws.

SEC. 230. All existing charters, under which a *bona fide* organization shall not have taken place and business commenced in good faith within twelve months from the time of the ratification of this Constitution, shall thereafter have no validity.

## ARTICLE XIV.

### CORPORATIONS.

### *Private Corporations.*

SECTION 1. Corporations may be formed under general laws, but shall not be created by special act, except for municipal, manufacturing, mining, immigration, industrial, and educational purposes, or for constructing canals, or improving navigable rivers and harbors of this State, and in cases where, in the judgment of the General Assembly, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered, amended, or repealed.

SEC. 2. All existing charters or grants of special or exclusive privileges, under which a *bona fide* organization shall not have taken place and business been commenced in good faith, at the time of the ratification of this Constitution, shall thereafter have no validity.

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[SEC. 229.]—

To prevent irrepealable exemptions and discriminations.—Mayor v. Stonewall Ins. Co., 53 Ala., 570.

The formation of corporations under the general law, rather than by special act, is a favored public policy—Cahall v. Cit. Mut. Bldg. Assn., 61 Ala., 232.

The test of the power to confer franchises is whether the privilege conduces to the public good.—Horst v. Moses, 48 Ala., 129.

Defects in the organization of a corporation organized under the general law may be cured by special statute.—Central A. & M. Assn. v. Gold Life Ins. Co., 70 Ala., 120.

The Legislature may, by special act, ratify and validate irregularities in the formation of a corporation.—Sanche v. Webb, 110 Ala., 214.

The Legislature can ratify an irregular formation of a corporation under a general law; it does not suspend the remedy of quo warranto.—State ex rel. Sanche v. Webb, 110 Ala., 214.

Acceptance of amendment by acquiescence, is sufficient to show consent to hold charter subject to conditions imposed by the Constitution. —State v. Montgomery L. Co., 102 Ala., 594.

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SEC. 231. The Legislature shall not remit the forfeiture of the charter of any corporation now existing or alter or amend the same, nor pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

SEC. 232. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein, and without filing with

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SEC. 3. The General Assembly shall not remit the forfeiture of the charter of any corporation now existing, or alter or amend the same, or pass any general or special law for the benefit of such corporation, other than in execution of a trust created by law or by contract, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of this Constitution.

SEC. 4. No foreign corporation shall do any business in this State without having at least one known place of business and an authorized agent or agents therein; and such corporation may be

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[SEC. 232.]—

Self-executing, needing no statute to give it operation.—A. U. Tel. Co. v. W. U. Tel. Co., 67 Ala., 26; Beard v. U. & A. Pub. Co., 71 Ala., 60; Sherwood v. Alvis, 83 Ala., 115; Dudley v. Collier, 87 Ala., 431; Farrior v. N. E. Mort. Sec. Co., 88 Ala., 275; Mullens v. Am. F. L. M. Co., 88 Ala., 280; Craddock v. Am. F. L. M. Co., 88 Ala., 281; Christian v. Am. F. L. M. Co., 89 Ala., 198; N. E. Mtg. Sec. Co. v. Ingram, 91 Ala., 337.

Inflexible and unalterable by Legislature.—Farrior v. N. E. Mort. Sec. Co., 88 Ala., 275; N. E. Mtg. Sec. Co. v. Ingram, 91 Ala., 337; Nelms v. E. A. L. M. Co., 92 Ala., 157; Sullivan v. Sullivan T. Co., 103 Ala., 371.

A legitimate exercise of police power and not in conflict with the Federal Constitution or any act of Congress.—Am. U. Tel. Co. v. W. U. Tel. Co., 67 Ala., 26; Dudley v. Collier, 87 Ala., 431.

Not intended to interfere with interstate commerce, and not applicable to corporations engaged therein as to such business.—Ware v. Hamilton-B. Shoe Co., 92 Ala., 145.

Foreign corporations are not citizens within meaning of Federal Constitution, and are wholly dependent on State laws for privileges; yet their contracts with citizens are subject to interstate commerce regulations and State cannot interfere with them.—Ware v. H-B. Shoe Co., 92 Ala., 145; Nelms v. E. A. L. M. Co., 92 Ala., 157; Noble v. Mitchell, 100 Ala., 519.

A contract to purchase shoes made between a citizen and a Missouri corporation, whether made here or there, is interstate commerce.—Ware v. H-B. Shoe Co., 92 Ala., 145; Nelms v. E. A. L. M. Co., 92 Ala., 157.

And so the sale of brick in another State to be delivered here.—Cook v. Rome Brick Co., 98 Ala., 409.

And so is the sale here of books in another State to be delivered here.—Culberson v. Am. T. & B. Co., 107 Ala., 457.

Loaning money is not interstate commerce; a single act constitutes "doing business" within the meaning of this section.—Nelms v. E. A. L. M. Co., 92 Ala., 157; Farrior v. N. E. Mtg. Sec. Co., 88 Ala., 275; Mullens v. Mtge. Co., 88 Ala., 280; Dundee Mtge. Co., v. Nixon, 95 Ala., 318; Guin v. N. E. Mtg. Sec. Co., 92 Ala., 135; State v. Bristol Bank, 108 Ala., 3.

Soliciting and receiving subscriptions for a newspaper published in another State is not "doing business" within meaning.—Beard v. U. & A. Pub. Co., 71 Ala., 60.

Nor the institution and prosecution of suits.—Christian v. Mtge. Co., 89 Ala., 198; Cook v. Rome Brick Co., 98 Ala., 409.

Before the statute imposing a penalty for non-compliance, an executed contract, made by a corporation not complying, was not void; and the other party could not question the contracting capacity of the corporation.—Sherwood v. Alvis, 83 Ala., 115; Craddock v. Am. F. L. M. Co., 88 Ala., 281.

Since the statute the contract is void, and, if executory, will not be enforced.—Dudley v. Collier, 87 Ala., 431; Farrior v. N. E. Mtg. Sec. Co., 88 Ala., 275; Collier v. Davis, 94 Ala., 456.

Sufficiency of appointment of agent and designation of place of business.—See N. E. Mtg. Sec. Co. v. Ingram, 91 Ala., 337; Nelms v. Mtge. Co., 92 Ala., 157; Mtge. Co. v. Sewall, 92 Ala., 163; McCall v. Mtge. Co., 99 Ala., 427; McLeod v. Mtge. Co., 100 Ala., 496.

Foreign corporation may be sued in any county where it is doing business; if not doing any business, in the county designated in its certificate.—Sullivan v. Sullivan T. Co., 103 Ala., 371.

A constitutional provision, prohibiting foreign corporations from doing business in the State, is self-executing.—Am. Co. v. W. Un. Tel. Co., 67 Ala., 26.

The extent of a privilege tax, imposed upon foreign corporations, is in the discretion of the taxing power.—Southern Co. v. State, 133 Ala., 624. See also Phœnix Co. v. State, 118 Ala., 143.

| 1901.—ARTICLE XII. | 1875.—ARTICLE XIV. |
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| the Secretary of State a certified copy of its articles of incorporation or association. Such corporation may be sued in any county where it does business, by service of process upon an agent anywhere in the State. The Legislature shall, by general law, provide for the payment to the State of Alabama of a franchise tax by such corporation, but such franchise tax shall be based on the actual amount of capital employed in this State. Strictly benevolent, educational or religious corporations shall not be required to pay such a tax. | sued in any county where it does business by service of process upon an agent anywhere in this State. |
| SEC. 233. No corporation shall engage in any business other than that expressly authorized in its charter or articles of incorporation. | SEC. 5. No corporation shall engage in any business other than that expressly authorized in its charter. |
| SEC. 234. No corporation shall issue stocks or bonds except for money, labor done, or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corporations | SEC. 6. No corporation shall issue stock or bonds except for money, labor done, or money or property actually received; and all fictitious increase of stock or indebtedness shall be void. The stock and bonded indebtedness of corpo- |

[SEC. 233.]—

Cannot engage in any business not expressly or impliedly authorized by original or amended charter.—State v. Montgomery Light Co., 102 Ala., 594.

Contract made by or with a corporation, in excess of its corporate authority, confers no rights, and party promising may revoke because ultra vires.—Smith v. Ala. L. Ins. Co., 4 Ala., 558; City Council v. M. & W. Plank Road Co., 31 Ala., 76; Waddell v. A. & F. R. Co., 31 Ala., 323; Grand Lodge v. Waddell, 36 Ala., 313; Marion Savings Bank v. Dunklin, 54 Ala., 471; Chambers v. Falkner, 65 Ala., 448; Eufaula v. McNab, 67 Ala., 588; Wilks v. G. P. R. Co., 79 Ala., 180; Westinghouse Mach. Co., v. Wilkinson, 79 Ala., 312; Sherwood v. Alvis, 83 Ala., 115; Chewacla Lime Co. v. Dismukes, 87 Ala., 344; Tenn. R. Trans. Co. v. Kavanaugh, 93 Ala., 324; S.C., 101 Ala., 1.

A statute to establish and carry on a dispensary is not in violation of this section.—Sheppard v. Dowling, 127 Ala., 9.

[SEC. 234.]—

Does not prohibit a corporation from pledging its bonds for loan of less than their face value.—Nelson v. Hubbard, 96 Ala., 238.

Requirements before increasing stock or bonded debt are for the benefit of stockholders, and may be waived.—Nelson v. Hubbard, 96 Ala., 238.

And cannot be invoked by creditors.—Barrett v. Pollak, 108 Ala., 390; Ala. I. & S. Co. v. McKeever, 112 Ala., 134.

Has no reference to the product of the business.—*Ib.*

To protect stockholders and the public and to prevent "stock watering."—Williams v. Evans, 87 Ala., 725; State v. Webb, 97 Ala., 111.

A subscription for stock with the understanding that the corporation shall issue stock of a greater face value than the amount of money paid, or the reasonable value of the property or labor furnished, is violative.—Williams v. Evans, 87 Ala., 725; Tutwiler v. Tuscaloosa C. I. & L. Co., 89 Ala., 391; Parsons v. Joseph, 92 Ala., 403; Elyton Land Co. v. Birmingham W. & E. Co., 92 Ala., 407; Gay v. Brierfield C. & I. Co., 94 Ala., 303; Davis v. Montgomery F. & C. Co., 101 Ala., 127; Ala. Nat. Bank v. Halsey, 109 Ala., 196.

The delivery of bonds, by a corporation, in excess of a debt, held not a fictitious issue of bonds.—Dexter v. McClellan & Scheerer, 116 Ala., 37.

There is no fictitious issue or disposition of the bonds within this provision, when a corporation gives as collateral security its mortgage bonds of a greater face value than the amount secured.—Dexter v. McClellan, 116 Ala., 37.

The Legislature may pass a curative law validating the organization of a corporation, and lessening its capital stock.—Sanche v. Webb, 110 Ala., 214.

A contract by a corporation to pay a purchaser of capital stock an amount of dividends equal to the amount paid for the stock is void.—Smith v. Ala. Fruit Association, 123 Ala., 538; Williams v. Evans, 87 Ala., 725; Fitzpatrick v. Publishing Co., 83 Ala., 604.

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shall not be increased except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice, given in pursuance of law.

SEC. 235. Municipal and other corporations and individuals invested with the privilege of taking property for public use, shall make just compensation, to be ascertained as may be provided by law, for the property taken, injured or destroyed by the construction or enlargement of its works, highways or improve-

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rations shall not be increased, except in pursuance of general laws, nor without the consent of the persons holding the larger amount in value of stock, first obtained at a meeting to be held after thirty days' notice given in pursuance of law.

SEC. 7. Municipal and other corporations and individuals invested with the privilege of taking private property for public use, shall make just compensation for the property taken, injured, or destroyed by the construction or enlargement of its works, highways, or improvements, which compensation shall be paid

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[SEC. 235.]—

A railroad corporation owning a right-of-way has such property as the Constitution requires to be condemned, and compensation made before taking.—Birmingham Co. v. Birmingham Co., 119 Ala., 129.

A court of equity has jurisdiction to enjoin a party, invested with this power, from proceeding, until just compensation has been made.—Birmingham Co. v. Birmingham Co., 119 Ala., 129; E. & W. R. R. Co. v. E. T., V. & G. R. R. Co., 75 Ala., 280.

Street railways, operated by horse-power, are no more than the drawing of any other carriage or vehicle over streets, and the allowance of them by a municipality does not violate any right of the owner of the fee.—Birmingham Co. v. Birmingham Co., 119 Ala., 137.

Constitution compels all corporate bodies, public or private, all individuals armed with the power, and the State and its instrumentalities, to first make just compensation.—Birmingham Co. v. Birmingham Co., 119 Ala., 129.

It is essential to preservation of rights, to the protection of citizens and preservation of the best interests of a community that all persons, invested with right of eminent domain, should be compelled to implicit obedience to mandates of Constitution.—Birmingham Co. v. Birmingham Co., 119 Ala., 129.

It is only when a party, who has a right to exercise the right of eminent domain, proceeds in its exercise without legal ascertainment and payment of compensation, that equity will enjoin the proceedings.—Birmingham Co. v. Birmingham Co., 119 Ala., 137; Birmingham Co. v. Birmingham Co., 119 Ala., 129; E. & W. R. R. C. v. E. T., V. & G. R. R. Co., 75 Ala., 280; H. A. & B. R. R. Co. v. Matthews, 99 Ala., 24.

A municipal corporation has no right to injure adjoining property, in repairing its streets and sidewalks, without first making just compensation to owner.—Niehaus et al. v. Cooke, 134 Ala., 223; City of Montgomery v. Maddox, 89 Ala., 181; Avondale v. McFarland, 101 Ala., 381; Montgomery v. Lemle, 121 Ala., 609.

Filing bond on appeal from Probate Court does not entitle applicant to enter upon the premises, but such right is suspended until assessment of damages by a jury.—Southern Ry. Co. v. B. S. & N. O. Ry. Co., 130 Ala., 660. See also Postal Co. v. A. G. S. R. Co., 92 Ala., 331; Iron Co. v. Cabaniss, 87 Ala., 328; M. & C. R. Co. v. B'ham S. & T. R. R. Co., 96 Ala., 571.

A municipality authorized by its charter may force property owners to contribute to the pavement of streets to the amount of benefit derived to such property from such improvement.—City of Montgomery v. Birdsong, 126 Ala., 632.

The crossing of a railroad right of way by another railroad company is a taking of property for which the Constitution requires compensation.—Birmingham Traction Co. v. Birmingham Ry. Co., 119 Ala., 129.

A city taking up a sidewalk has no right to injure a stone wall without making compensation to the owner, and the owner may enjoin it.—Niehaus v. Cooke, 134 Ala., 223.

Liberally construed in favor of the citizen.—City Council v. Townsend, 80 Ala., 489; City Council v. Maddox, 89 Ala., 181.

Has no application, where a municipal corporation tears down obstructions or fills up excavations in sidewalks.—Winter v. City Council, 83 Ala., 589.

Prepayment of just compensation before the taking is complete, is guaranteed, without regard to the agency employed, in the taking, unless it be the State.—Montgomery S. Ry. Co. v. Sayre, 72 Ala., 443; Smith v. Inge, 80 Ala., 283; City Council v. Townsend, 80 Ala., 489; S. C., 84 Ala., 478; Postal T. C. Co. v. A. G. S. R. Co., 92 Ala., 331; A. M. Ry. Co. v. Newton, 94 Ala., 443; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala., 571.

Extent to which the municipal corporation is liable for consequental damages if injury or destruction is produced by the construction or enlargement of some work, highway or improvement, as by changing the grade of a street.—C. & W. Rv. Co. v. Witherow, 82 Ala., 190; Evans v. S. & W. Ry. Co., 90 Ala., 54. (overruling City Council v. Townsend, 80 Ala., 489; S. C., 84 Ala., 478).

| 1901.—ARTICLE XII. | 1875.—ARTICLE XIV. |
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| ments, which compensation shall be paid before such taking, injury or destruction. The Legislature is hereby prohibited from denying the right of appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers or otherwise, but such appeal shall not deprive those who have obtained the judgment of condemnation from a right of entry, provided the amount of damages assessed shall have been paid into court in money, and a bond shall have been given in not less than double the amount of the damages assessed, with good and sufficient sureties, to pay such damages as the property owner may sustain; and the amount of damages in all cases of appeals shall on demand of either party, be determined by a jury according to law. | before such taking, injury, or destruction. The General Assembly is hereby prohibited from depriving any person of an appeal from any preliminary assessment of damages against any such corporations or individuals made by viewers, or otherwise; and the amount of such damages in all cases of appeal shall, on the demand of either party, be determined by a jury according to law. |
| SEC. 236. Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her. | SEC. 8. Dues from private corporations shall be secured by such means as may be prescribed by law; but in no case shall any stockholder be individually liable otherwise than for the unpaid stock owned by him or her. |
| SEC. 237. No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation. | SEC. 9. No corporation shall issue preferred stock without the consent of the owners of two-thirds of the stock of said corporation. |

The crossing of one railroad by another is a taking of private property.—M. & G. R. Co. v. A. M. Ry., Co., 87 Ala., 501; M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala., 571.

Does not authorize a law giving a municipal corporation the right to open streets at the cost of adjacent property in proportion to benefit received.—Miller v. Mobile, 47 Ala., 163. "Determined by a jury according to law" means a jury of twelve men, according to the course of common law; right of appeal to a jury is preserved.—Woodward I. Co. v. Cabaniss, 87 Ala., 328; A. M. Ry. Co. v. Newton, 94 Ala., 443; M. & C. R. Co. v. Hopkins, 108 Ala., 150.

Just compensation includes not only the value of the lots taken, but the injury to the remaining lots or parts of lots and if the ways of ingress and egress are interrupted this forms a part of the injury for which compensation must be made.—Commissioners v. Street, 116 Ala., 22.

Section 1391 of the Code of 1896 which provides that the owner shall receive compensation for the land taken, in proceedings establishing public roads, is not in contravention of this provision.—Commissioners v. Street, 116 Ala., 22.

The use of the streets of municipalities for electric street railway purposes with the consent of the municipality are legitimate, without any right of the owner of the fee to compensation.—Birmingham Co. v. Birmingham Co., 119 Ala., 137.

It is not the imposition of an additional servitude.—*Ib.*

The building of an ordinary steam passenger and traffic railroad upon public streets of town imposes a servitude entitling the owner of the fee to compensation.—Birmingham Co. v. Birmingham Co., 119 Ala., 137; W. R. of Ala. v. Ala. G. T. R. Co., 96 Ala., 272.

[SEC. 236.]—

If property is taken in payment of subscription for stock at grossly excessive valuation, creditors may proceed against such subscribers as for a partially paid subscription.—Parsons v. Joseph, 92 Ala., 403; Elyton Land Co. v. Birmingham W. & E. Co., 92 Ala., 407. See citations to Art. I., sec. 24.

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SEC. 238. The Legislature shall have the power to alter, amend or revoke any charter of incorporation now existing and revocable at the ratification of this Constitution, or any that may be hereafter created, whenever, in its opinion, such charter may be injurious to the citizens of this State, in such manner, however, that no injustice shall be done to the stockholders.

SEC. 239. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph and telephone within this State, and connect the same with other lines; and the Legislature shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph or telephone company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph or telephone company owning a complete line, or acquire, by purchase or otherwise, any other competing line of telegraph or telephone.

SEC. 240. All corporations shall have the right to sue, and shall be subject to be sued, in all courts in like cases as natural persons.

SEC. 241. The term "corporation," as used in this Article, shall be construed to include all joint stock companies, and all associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.

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SEC. 10. The General Assembly shall have the power to alter, revoke, or amend any charter of incorporation now existing, and revocable at the ratification of this Constitution, or any that may hereafter be created, whenever, in their opinion, it may be injurious to the citizens of the State; in such manner, however, that no injustice shall be done to the corporators. No law hereafter enacted shall create, renew, or extend the charter of more than one corporation.

SEC. 11. Any association or corporation organized for the purpose, or any individual, shall have the right to construct and maintain lines of telegraph within this State, and connect the same with other lines; and the General Assembly shall, by general law of uniform operation, provide reasonable regulations to give full effect to this section. No telegraph company shall consolidate with or hold a controlling interest in the stock or bonds of any other telegraph company owning a competing line, or acquire, by purchase or otherwise, any other competing line of telegraph.

SEC. 12. All corporations shall have the right to sue, and shall be subject to be sued in all courts, in like cases as natural persons.

SEC. 13. The term "corporation," as used in this Article, shall be construed to include all joint-stock companies, or any associations having any of the powers or privileges of corporations, not possessed by individuals or partnerships.

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[SEC. 238.]—

Power of repeal.—Bibb v. Hall, 101 Ala., 79.

A statute to establish and carry on a dispensary is not in violation of this provision.—Sheppard v. Dowling, 127 Ala., 9.

[SEC. 240.]—

A statute authorizing suits ex delicto against railroad companies for injury to animals trespassing upon its track to be brought in a Justice's court for an amount in excess of $50.00, the limit of the jurisdiction of Justices, for actions of torts in other cases, was held in the case of Brown v. A. G. S. R. R. Co., 87 Ala., 370, to be in violation of this provision, but this case was reviewed in Whitehead's case. 109 Ala., 495, and there declared dictum.

No burden can be imposed on one class of persons, natural or artificial, which is not, under like conditions, imposed on all other classes.—Mayor v. Stonewall Ins. Co., 53 Ala. 570; S. & N. A. R. Co. v. Morris, 65 Ala., 193; Green v. State, 73 Ala., 26; Home Protection v. Richards, 74 Ala., 466; Smith v. L. & N. R. R. Co., 75 Ala., 449; Carter v. Coleman, 84 Ala., 256; Youngblood v. Birmingham T. & S. Co., 95 Ala., 521.

Sec. 877 of the Code of 1896, authorizing the assignment in writing of claims against railroads, is not in violation of this provision of the Constitution.—L. & N. R. R. Co. v. Landers, 135 Ala., 504.

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*Railroads and Canals.*

SEC. 242. All railroads and canals not constructed and used exclusively for private purposes, shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railway between any points in this State, and connect at the State line, with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and each shall receive and transport the freight, passengers and cars, loaded or empty, of the others, without delay or discrimination.

SEC. 243. The power and authority of regulating railroad freight and passenger tariffs, the locating and building of passenger and freight depots, correcting abuses, preventing unjust discrimination and extortion and requiring reasonable and just rates of freight and passenger tariffs, are hereby conferred upon the Legislature, whose duty it shall be to pass laws from time to time regulating freight and passenger tariffs, to prohibit unjust discrimination on the various railroads, canals and rivers of the State, and to prohibit the charging of other than just and reasonable rates and enforce the same by adequate penalties. (*a*)

SEC. 244. No railroad or other transportation company or corporation shall grant free passes or sell tickets or passes at a discount, other than as sold to the public generally, to any member of the Legislature or to any officer exercising judicial functions under the laws of this State; and any such member or officer receiving such a pass or ticket for himself, or procuring the same for another, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not exceeding five hundred dollars, and at the discretion of the court trying the case, in

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*Railroads and Canals.*

SEC. 21. All railroads and canals shall be public highways, and all railroad and canal companies shall be common carriers. Any association or corporation organized for the purpose shall have the right to construct and operate a railroad between any points in this State, and to connect, at the State line, with railroads of other States. Every railroad company shall have the right with its road to intersect, connect with, or cross any other railroad, and shall receive and transport, each, the other's freight, passengers, and cars, loaded or empty, without delay or discrimination.

SEC. 22. The General Assembly shall pass laws to correct abuses and prevent unjust discrimination and extortion in the rates of freights and passenger tariffs on railroads, canals, and rivers in this State.

SEC. 23. No railroad or other transportation company shall grant free passes, or sell tickets or passes at a discount other than as sold to the public generally, to any member of the General Assembly, or to any person holding office under this State or the United States.

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[SEC. 242.]—

Railroad crossing another.—M. & C. R. Co. v. B. S. & T. R. Co., 96 Ala., 571; M. & C. R. Co. v. Hopkins, 108 Ala., 159.

Does not authorize an invasion of the older right of way without condemnation.—Southern Ry. Co. v. Birmingham S. & N. O. Ry. Co., 130 Ala., 660; Memphis & C. R. Co. v. Birmingham S. & T. R. Co., 96 Ala., 571.

(*a*) Acts 1903, pp. 354, 483.

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addition to such fine, may be imprisoned for a term not exceeding six months, and upon conviction, shall be subject to impeachment and removal from office. The courts having jurisdiction shall give this law specially in charge to the Grand Juries, and when the evidence is sufficient to authorize an indictment, the Grand Jury must present a true bill. The Circuit Court or any other court of like jurisdiction in any county into or through which such member or officer is transported by the use of such prohibited pass or ticket, shall have jurisdiction of the case, provided only one prosecution shall be had for the same offense; and provided further, that the trial and judgment for one offense shall not bar a prosecution for another offense when the same pass or ticket is used; and provided further, that nothing herein shall prevent a member of the Legislature who is a *bona fide* employe of a railroad or other transportation company or corporation at the time of his election, from accepting or procuring for himself or another, not a member of the Legislature, or officer exercising judicial functions, a free pass over the railroads or other transportation company or corporation by which he is employed.

SEC. 245. No railroad company shall give or pay any rebate, or a bonus in the nature thereof, directly or indirectly, or do any act to mislead or deceive the public as to the real rates charged or received for freights or passage; and any such payments shall be illegal and void, and these prohibitions shall be enforced by suitable penalties.

SEC. 246. No railroad, canal or transportation company in existence at the time of the ratification of this Constitution, shall have the benefit of any future legislation by general or special laws other than in execution of a trust created by law or by contract, except on the condition of complete acceptance of all the provisions of this Article.

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SEC. 25. No railroad, canal, or other transportation company, in existence at the time of the ratification of this Constitution, shall have the benefit of any future legislation by general or special laws, other than in execution of a trust created by law, or by contract, except on the condition of complete acceptance of all the provisions of this Article.

[SEC. 246.]—

Acceptance by acquiescence of a charter as amended is sufficient to show consent on the part of a corporation to hold its charter subject to conditions imposed by the Constitution. —State v. Montgomery Co., 102 Ala., 594.

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BANKS AND BANKING.

SEC. 247. The Legislature shall not have the power to establish or incorporate any bank or banking company or moneyed institution for the purpose of issuing bills of credit or bills payable to order of bearer, except under the conditions prescribed in this Constitution. (*a*)

SEC. 248. No bank shall be established otherwise than under a general banking law, nor other than upon a specie basis; provided, that any bank may be established with authority to issue bills to circulate as money in an amount equal to the face value of bonds of the United States, or of this State, convertible into specie at their face value, which shall, before such bank is authorized to issue its bills for circulation, be deposited with the State Treasurer or other depository prescribed by law, in an amount equal to the aggregate of such proposed issue, with power in such treasurer or depository to dispose of any or all of such bonds for a sufficient amount of specie to redeem the circulating notes of such bank at any time and without delay, should such bank suspend specie payment or fail to redeem its notes on demand.

SEC. 249. All bills or notes issued as money shall be at all times redeemable in gold or silver, and no law shall be passed sanctioning directly or indirectly, the suspension by any bank or banking company of specie payment.

SEC. 250. Holders of bank notes, and depositors who have not stipulated for interest, shall, for such notes and deposits, be entitled in case of insolvency, to preference of payment over all other creditors; provided, this section shall apply to all banks whether incoroporated or not.

SEC. 251. Every bank or banking company shall be required to cease all banking operations within twenty years (*b*) from the time of its organization, unless the time be extended by law, and promptly thereafter close its business; but after it has closed its business it shall have corporate capacity to sue and shall be liable to suits until its affairs and liabilities are fully closed.

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*Banks and Banking.*

SEC. 14. The General Assembly shall not have the power to establish or incorporate any bank or banking company, or moneyed institution, for the purpose of issuing bills of credit, or bills payable to order of bearer, except under the conditions prescribed in this Constitution.

SEC. 15. No banks shall be established otherwise than under a general banking law, nor otherwise than upon a specie basis.

SEC. 16. All bills or notes issued as money shall be at all times redeemable in gold or silver, and no law shall be passed sanctioning, directly or indirectly, the suspension by any bank or banking company of specie payment.

SEC. 17. Holders of bank-notes, and depositors who have not stipulated for interest, shall, for such notes and deposits, be entitled, in case of insolvency, to the preference of payment over all other creditors.

SEC. 18. Every bank or banking company shall be required to cease all banking operations within twenty years from the time of its organization (unless the General Assembly shall extend the time), and promptly thereafter close its business; but shall have corporate capacity to sue and shall be liable to suit, until its affairs and liabilities are fully closed.

(a) Acts 1903, p. 483. (b) Acts 1903, p. 160.

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SEC. 252. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals for lending money.

SEC. 253. Neither the State nor any political subdivision thereof, shall be a stockholder in any bank, nor shall the credit of the State or any political subdivision thereof be given or lent to any banking company, association or corporation.

SEC. 254. The Legislature shall by appropriate laws provide for the examination, by some public officer, of all banks and banking institutions and trust companies engaged in banking business in this State; and each of such banks and banking companies or institutions shall, through its president, or such other officer as the Legislature may designate, make a report under oath of its resources and liabilities at least twice a year. (*a*)

SEC. 255. The provisions of this Article shall apply to all banks except National Banks, and to all trust companies and individuals doing a banking business, whether incorporated or not.

## ARTICLE XIV.

### EDUCATION.

SEC. 256. The Legislature shall establish, organize and maintain a liberal system of public schools throughout the State for the benefit of the children thereof between the ages of seven and twenty-one years. The public school fund shall be apportioned to the several counties in proportion to the number of school children of school age therein, and shall be so apportioned to the schools in the districts or townships in the counties as to provide, as nearly as practicable, school terms of equal duration in such school districts or townships. Separate schools shall be provided for white and colored children, and no child of either

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SEC. 19. No bank shall receive, directly or indirectly, a greater rate of interest than shall be allowed by law to individuals for lending money.

SEC. 20. The State shall not be a stockholder in any bank, nor shall the credit of the State ever be given or loaned to any banking company, association, or corporation.

## ARTICLE XIII.

### EDUCATION.

SECTION 1. The General Assembly shall establish, organize, and maintain a system of public schools throughout the State, for the equal benefit of the children thereof between the ages of seven and twenty-one years; but separate schools shall be provided for the children of citizens of African descent.

(a) Acts 1903, pp. 160, 483, 479.

[SEC. 256.]—

Mandatory.—Elsberry v. Seay, 83 Ala., 614.

System must extend throughout the State, operating upon and in favor of all alike, without special local rights, privileges or burdens.—Schultes v. Eberly, 82 Ala., 242.

Separate school districts may be established, but no implied privileges arise in their favor.—Schultes v. Eberly, 82 Ala., 242.

Institutions of learning, distinct from the public schools, may be established, but the public school fund may not be reduced below the minimum for their maintenance.—Elsberry v. Seay, 83 Ala., 614.

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race shall be permitted to attend a school of the other race.

SEC. 257. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or entrusted to this State or given by the United States for educational purposes shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific object of the original grants or appropriations.

SEC. 258. All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools.

SEC. 259. All poll taxes collected in this State shall be applied to the support of the public schools in the respective counties where collected.

SEC. 260. The income arising from the Sixteenth Section trust fund, the surplus revenue fund, until it is called for by the United States Government, and the funds enumerated in Sections 257 and 258 of this Constitution, together with a special annual tax of thirty cents on each one hundred dollars of taxable property in this State, which the Legislature shall levy, shall be applied to the support and maintenance of the public schools, and it shall be the duty of the Legislature to increase the public school fund from time to time as the necessity therefor and the condition of the treasury and the resources of the State may justify; provided, that nothing herein con-

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SEC. 2. The principal of all funds arising from the sale or other disposition of lands or other property, which has been or may hereafter be granted or intrusted to this State, or given by the United States, for educational purposes, shall be preserved inviolate and undiminished; and the income arising therefrom shall be faithfully applied to the specific objects of the original grants or appropriations.

SEC. 3. All lands or other property given by individuals, or appropriated by the State for educational purposes, and all estates of deceased persons who die without leaving a will or heir, shall be faithfully applied to the maintenance of the public schools.

SEC. 4. The General Assembly shall also provide for the levying and collection of an annual poll-tax, not to exceed one dollar and fifty cents on each poll, which shall be applied to the support of the public schools in the counties in which it is levied and collected.

SEC. 5. The income arising from the Sixteenth Section Trust Fund, the Surplus Revenue Fund, until it is called for by the United States Government, and the funds enumerated in Sections Three and Four of this Article, with such other moneys, to be not less than one hundred thousand dollars per annum, as the General Assembly shall provide by taxation or otherwise, shall be applied to the support and maintenance of the public schools; and it shall be the duty of the General Assembly to increase, from time to time, the public school fund, as the condition of the treasury and the resources of the State will admit.

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[SEC. 259.]—

Poll tax must bear the expense of its own assessment and collection.—Shaver v. Robinson, 59 Ala., 195.

It is not within the legislative power to direct the levy and collection of a poll tax in any other manner or for other purposes than provided in the Constitution.—Francis v. Peevy, 132 Ala., 58. Constitution is mandatory.—*Ib.*

Other than the poll tax no provision is made for special taxation for educational purposes.—Schultes v. Eberly, 82 Ala., 242 (Const. of 1901 changes). Law "setting apart and appropriating from the school fund for the colored people" a fund for the maintenance of an university for colored people is an unauthorized conversion.—Elsberry v. Seay, 83 Ala., 614.

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tained shall be so construed as to authorize the Legislature to levy in any one year a greater rate of State taxation for all purposes, including schools than sixty-five cents on each one hundred dollars' worth of taxable property; and provided further, that nothing herein contained shall prevent the Legislature from first providing for the payment of the bonded indebtedness of the State and interest thereon out of all the revenue of the State.

SEC. 261. Not more than four per cent. of all moneys raised or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; provided, that the Legislature may, by a vote of two-thirds of each House, suspend the operation of this section.

SEC. 262. The supervision of the public schools shall be vested in a Superintendent of Education, whose powers, duties and compensation shall be fixed by law.

SEC. 263. No money raised for the support of the public schools shall be appropriated to or used for the support of any sectarian or denominational school.

SEC. 264. The State University shall be under the management and control of a Board of Trustees, (*a*) which shall consist of two members from the Congressional District in which the University is located, one from each of the other Congressional districts in the State, the Superintendent of Education and the Governor, who shall be ex-officio president of the board. The members of the Board of Trustees as now constituted shall hold

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SEC. 6. Not more than four per cent of all moneys raised, or which may hereafter be appropriated for the support of public schools, shall be used or expended otherwise than for the payment of teachers employed in such schools; *Provided,* that the General Assembly may, by a vote of two-thirds of each House, suspend the operation of this section.

SEC. 7. The supervision of the public schools shall be vested in a Superintendent of Education, whose powers, duties, term of office, and compensation shall be fixed by law. The Superintendent of Education shall be elected by the qualified voters of the State in such manner, and at such time, as shall be provided by law.

SEC. 8. No money raised for the support of the public schools of the State shall be appropriated to, or used for, the support of any sectarian or denominational school.

SEC. 9. The State University and the Agricultural and Mechanical College shall each be under the management and control of a Board of Trustees. The Board for the University shall consist of two members from the congressional district in which the University is located, and one from each of the other congressional districts in the State. The Board for the Agricultural and Mechanical College shall consist of two members from

An "University for Colored People," not under the control of the Superintendent of Education, is not a public school.—Elsberry v. Seay, 83 Ala., 614.

[SEC. 264.]—

The Governor has no authority, without the consent of the Senate to appoint a Trustee for the university.—State, ex rel., Little v. Foster, 130 Ala., 154. The duration of the term of trustees is six years.—*Ib.*

A provision for electing two trustees every two years is intended to have one-half of the trustees chosen biennially; after this is accomplished, the provision is functus officio.—Little v. Foster, 130 Ala., 154.

(a) Acts 1903, p. 109.

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office until their respective terms expire under existing law, and until their successors shall be elected and confirmed as hereinafter required. Successors to those trustees whose terms expire in nineteen hundred and two shall hold office until nineteen hundred and seven; successors to those trustees whose terms expire in nineteen hundred and four shall hold office until nineteen hundred and eleven; successors to those trustees whose terms expire in nineteen hundred and six shall hold office until nineteen hundred and fifteen; and thereafter their successors shall hold office for a term of twelve years. When the term of any member of such board shall expire, the remaining members of the board shall, by secret ballot, elect his successor; provided, that any trustee so elected shall hold office from the date of his election until his confirmation or rejection by the Senate, and, if confirmed, until the expiration of the term for which he was elected, and until his successor is elected. At every meeting of the Legislature the Superintendent of Education shall certify to the Senate the names of all who shall have been so elected since the last session of the Legislature, and the Senate shall confirm or reject them, as it shall determine is for the best interest of the University. If it reject the names of any members, it shall thereupon elect trustees in the stead of those rejected. In case of a vacancy on said board by death or resignation of a member, or from any cause other than the expiration of his term of office, the board shall elect his successor, who shall hold office until the next session of the Legislature. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

SEC. 265. After the ratification of this Constitution there shall be paid out of the treasury of this State at the time and in the manner provided by law, the sum of not less than thirty-six thousand dollars per annum as interest on the funds of the University of Alabama, heretofore covered into the treasury, for the main-

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the congressional district in which the College is located, and one from each of the other congressional districts in the State. Said trustees shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold office for a term of six years, and until their successors shall be appointed and qualified. After the first appointment each Board shall be divided into three classes, as nearly equal as may be. The seats of the first class shall be vacated at the expiration of two years, and those of the second class in four years, and those of the third class at the end of six years, from the date of appointment, so that one-third may be chosen biennially. No trustee shall receive any pay or emolument, other than his actual expenses incurred in the discharge of his duties as such. The Governor shall be *ex officio* president, and the Superintendent of Education *ex officio* a member of each of said Boards of Trustees.

tenance and support of said institution; provided, that the Legislature shall have the power at any time they deem proper for the best interest of said University to abilosh the military (*a*) system at said institution or reduce the said system to a department of instruction, and that such action on the part of the Legislature shall not cause any diminution of the amount of the annual interest payable out of the treasury for the support and maintenance of said University.

SEC. 266. The Alabama Polytechnic Institute, formerly called the Agricultural and Mechanical College, shall be under the management and control of a Board of Trustees, which shall consist of two members from the Congressional district in which the institute is located, and one from each of the other Congressional districts in the State, the State Superintendent of Education and the Governor, who shall be ex-officio president of the board. The trustees shall be appointed by the Governor, by and with the advice and consent of the Senate, and shall hold office for a term of twelve years, and until their successors shall be appointed and qualified. The board shall be divided into three classes, as nearly equal as may be, so that one-third may be chosen quadrennially. Vacancies occurring in the office of trustees from death or resignation, and the vacancies regularly occurring in the year nineteen hundred and five shall be filled by the Governor, and such appointee shall hold office until the next meeting of the Legislature. Successors to those trustees whose terms expire in nineteen hundred and three shall hold office until nineteen hundred and eleven; successors to those whose terms expire in nineteen hundred and five shall hold office until nineteen hundred and fifteen; and successors to those whose terms expire in nineteen hundred and seven shall hold office until nineteen hundred and nineteen. No trustee shall receive any pay or emolument other than his actual expenses incurred in the discharge of his duties as such.

(a) Acts 1903, p. 115.

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SEC. 267. The Legislature shall not have power to change the location of the State University, or the Alabama Polytechnic Institute, or the Alabama Schools for the Deaf and Blind, or the Alabama Girls' Industrial School, as now established by law, except upon a vote of two-thirds of the Legislature taken by yeas and nays and entered upon the Journals.

SEC. 268. The Legislature shall provide for taking a school census by townships and districts throughout the State not oftener than once in two years, and shall provide for the punishment of all persons or officers making false or fraudulent enumerations and returns; provided, the State Superintendent of Education may order and supervise the taking of a new census in any township, district or county, whenever he may have reasonable cause to believe that false or fraudulent returns have been made.

SEC. 269. The several counties in this State shall have power to levy and collect a special tax (*a*) not exceeding ten cents on each one hundred dollars of taxable property in such counties, for the support of public schools; provided, that the rate of such tax, the time it is to continue, and the purpose thereof, shall have been first submitted to a vote of the qualified electors of the county, and voted for by three-fifths of those voting at such election; but the rate of such special tax shall not increase the rate of taxation, State and county combined, in any one year, to more than one dollar and twenty-five cents on each one hundred dollars of taxable property; excluding, however, all special county taxes for public buildings, roads, bridges, and the payment of debts existing at the ratification of the Constitution of eighteen hundred and seventy-five. The funds arising from such special school tax shall be so apportioned and paid through the proper school officials to the several schools in the townships and districts in the county that the school terms of the respective schools shall be extended by such supplement as nearly the same

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SEC. 10. The General Assembly shall have no power to change the location of the State University, or the Agricultural and Mechanical College, as now established by law, except upon a vote of two-thirds of the members of the General Assembly, taken by yeas and nays, and entered upon the Journals.

(a) Acts 1903, p. 350.

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length of time as practicable; provided, that this section shall not apply to the cities of Decatur, New Decatur and Cullman.

SEC. 270. The provisions of this article and of any act of the Legislature passed in pursuance thereof to establish, organize and maintain a system of public schools throughout the State, shall apply to Mobile county only so far as to authorize and require the authorities designated by law to draw the portions of the funds to which said county shall be entitled for school purposes and to make reports to the Superintendent of Education as may be prescribed by law; and all special incomes and powers of taxation as now authorized by law for the benefit of public schools in said county shall remain undisturbed until otherwise provided by the Legislature; provided, that separate schools for each race shall always be maintained by said school authorities.

## ARTICLE XV.

### MILITIA.

SEC. 271. The Legislature shall have power to declare who shall constitute the militia of the State, and to provide for organizing, arming and disciplining the same; and the Legislature may provide for the organization of a State and Naval Militia. (*a*)

SEC. 272. The Legislature, in providing for the organization, equipment and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

SEC. 273. Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law, they may be appointed by the Governor.

SEC. 274. Volunteer organizations of infantry, cavalry, and artillery and naval militia may be formed in such manner and under such restrictions and with such privileges as may be provided by law.

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SEC. 11. The provisions of this Article, and of any act of the General Assembly, passed in pursuance thereof, to establish, organize, and maintain a system of public schools throughout the State, shall apply to Mobile County only so far as to authorize and require the authorities designated by law to draw the portion of the funds to which said county will be entitled for school purposes, and to make reports to the Superintendent of Education, as may be prescribed by law. And all special incomes and powers of taxation, as now authorized by law for the benefit of public schools in said county, shall remain undisturbed until otherwise provided by the General Assembly; *Provided,* that separate schools for each race shall always be maintained by said school authorities.

## ARTICLE XII.

### MILITIA.

SECTION 1. All able-bodied male inhabitants of this State, between the ages of eighteen years and forty-five years, who are citizens of the United States, or have declared their intention to become such citizens, shall be liable to military duty in the militia of the State.

SEC. 2. The General Assembly, in providing for the organization, equipment, and discipline of the militia, shall conform as nearly as practicable to the regulations for the government of the armies of the United States.

SEC. 3. Each company and regiment shall elect its own company and regimental officers; but if any company or regiment shall neglect to elect such officers within the time prescribed by law, they may be appointed by the Governor.

SEC. 4. Volunteer organizations of infantry, cavalry, and artillery may be formed in such manner, and under such restrictions, and with such privileges, as may be provided by law.

(a) Acts 1903, pp. 156 and 265.

*Oath of Office.*

1901.—ARTICLE XV.

SEC. 275. The militia and volunteer forces shall, in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at musters, parades and elections and in going to and returning from the same.

SEC. 276. The Governor shall, with the advice and consent of the Senate, appoint all general officers, whose terms of office shall be four years. The Governor, the generals and regimental and battalion commanders shall appoint their own staffs, as may be provided by law.

SEC. 277. The Legislature shall provide for the safe-keeping of the arms, ammunition and accoutrements, and military records, banners and relics of the State.

SEC. 278. The officers and men of the militia and volunteer forces shall not be entitled to or receive any pay, rations or emoluments when not in active service.

## ARTICLE XVI.

### OATH OF OFFICE.

SEC. 279. All members of the Legislature, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation.

"I ....., solemnly swear (or affirm, as the case may be), that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

The oath may be administered by the presiding officer of either House of the Legislature, or by any officer authorized by law to administer an oath.

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SEC. 5. The militia and volunteer forces shall, in all cases, except treason, felony, and breach of the peace, be privileged from arrest during their attendance at musters, parades, and elections, and in going to and returning from the same.

SEC. 6. The Governor shall, except as otherwise provided herein, be Commander-in-Chief of the militia and volunteer forces of the State, except when in the service of the United States, and shall, with the advice and consent of the Senate, appoint all general officers, whose terms of office shall be for four years. The Governor, the generals, and regimental and battalion commanders shall appoint their own staffs, as may be provided by law.

SEC. 7. The General Assembly shall provide for the safe-keeping of the arms, ammunition, and accoutrements, military records, banners, and relics of the State.

SEC. 8. The officers and men of the militia and volunteer forces shall not be entitled to, or receive any pay, rations, or emoluments, when not in active service.

## ARTICLE XV.

### OATH OF OFFICE.

SECTION 1. All members of the General Assembly, and all officers, executive and judicial, before they enter upon the execution of the duties of their respective offices, shall take the following oath or affirmation, to wit:

"I, ————————, solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States, and the Constitution of the State of Alabama, so long as I continue a citizen thereof; and that I will faithfully and honestly discharge the duties of the office upon which I am about to enter, to the best of my ability. So help me God."

Which oath may be administered by the presiding officer of either House of the General Assembly, or by any officer authorized by law to administer an oath.

## ARTICLE XVII.

### MISCELLANEOUS PROVISIONS.

SEC. 280. No person holding an office of profit under the United States, except postmasters, whose annual salaries do not exceed two hundred dollars, shall during his continuance in such office hold any office of profit under this State; nor, unless otherwise provided in this Constitution, shall any person hold two offices of profit at one and the same time under this State, except Justices of the Peace, Constables, Notaries Public, and Commissioners of Deeds.

SEC. 281. The salary, fees or compensation of any officer holding any civil office of profit under this State or any county or municipality thereof, shall not be increased or diminished during the term for which he shall have been elected or appointed.

SEC. 282. It is made the duty of the Legislature to enact all laws necessary to give effect to the provisions of this Constitution.

SEC. 283. The act of the General Assembly of Alabama entitled "An Act to consolidate and adjust the bonded debt of the State of Alabama," approved February 18th, 1895, and an act amendatory thereof entitled "An Act to amend Section 6 of an act to consolidate and adjust the bonded debt of the State of Alabama, approved February 18th, 1895," which said last named act was approved February 16th, 1899, are hereby made valid, and both of said acts shall have the full force and effect of law, except in so far as they authorize the redemption before maturity of the bonds authorized by said acts to be issued. The Governor is authorized and empowered to act under the same and to carry out all the provisions thereof; provided, that the bonds authorized to be issued by said acts and issued thereunder may be made payable at any time, not exceeding fifty years from the date thereof, and shall not be redeemable until their maturity.

## ARTICLE XVI.

### MISCELLANEOUS PROVISIONS.

SECTION 1. No person holding an office of profit under the United States, except postmasters whose annual salary does not exceed two hundred dollars, shall, during his continuance in such office, hold any office of profit under this State; nor shall any person hold two offices of profit at one and the same time under this State, except Justices of the Peace, Constables, Notaries Public, and Commissioners of Deeds.

SEC. 2. It is made the duty of the General Assembly to enact all laws necessary to give effect to the provisions of this Constitution.

*Mode of Amending the Constitution.*

## ARTICLE XVIII.

MODE OF AMENDING THE CONSTITUTION.

SEC. 284. Amendments may be proposed to this Constitution by the Legislature in the manner following: The proposed amendments shall be read in the House in which they originate on three several days, and, if upon the third reading three-fifths of all the members elected to that House shall vote in favor

## ARTICLE XVII.

MODE OF AMENDING THE CONSTITUTION.

SECTION 1. The General Assembly may, whenever two-thirds of each House shall deem it necessary, propose amendments to this Constitution, which, having been read on three several days in each House, shall be duly published in such manner as the General Assembly may direct, at least three months before the

[SEC. 284.]—

The people of the several States are the constituency of the Federal as well as the State government, and may alter the Federal Constitution and of their respective States, so long as they do not ignore or deny allegiance or antagonize the Federal Constitution.—Penn. v. Tollison, 26 Ark., 545.

Where an amendment of a Constitution provides that the section of the old shall be amended so as to read as follows, "What follows becomes the entire law, and the old section ceases to have any force."—15 Fla., 735.

Where a Constitution is amended and parts of the old retained have become pro haec vice parts of the new Constitution. An act to amend the Constitution of Mississippi was held to be enacted in accordance with the requirements of that Constitution, and having been ratified by the people and inserted in the Constitution by the succeeding Legislatures, it must thereafter be regarded as a part of the Constitution.—Green v. Weller., 32 Miss., 650.

The Legislature providing for the calling of a constitutional convention cannot impose additional disqualifications on electors for voting for delegates to the convention, other than those which disqualify them to vote on the question of calling vel non. It was held in North Carolina that the Federal Government could call a convention of the people of North Carolina for the purpose of framing a Constitution, notwithstanding the Constitution of North Carolina contained provisions for the amendment of its Constitution, and did not authorize such calling by the Federal Government. This was no doubt a reconstruction measure, and certainly could never have been thought to have been valid or righteous law, but simply a reconstruction measure, when the rights and liberties of the Southern States were not considered other than subjects of booty and plunder for "carpet baggers" and "scalawags."—In Re Hughes, 61 N. C., 57.

Constitutions usually contain provisions that proposed amendments shall be entered in the Journals of each House, but this does not mean that they shall be copied into the Journals in full, but only requires that it shall be by identical reference. They often contain provision that amendments shall be passed by a majority of two-thirds or three-fourths of each branch of the Legislature; this means two-thirds or three-fourths of the majority, sometimes the quorum.—Green v. Weller, 32 Miss., 650; Thomason v. Ruggles, 69 Cal., 465.

The power conferred upon the Legislature to amend the Constitution was held not to authorize a repeal of any part of the bill of rights.—Eason v. State, 11 Ark., 481.

The time at which amendment should be submitted to the people for ratification may be fixed by an act of the Legislature, and approved by the Governor, as other acts. Where the Constitution provides that the proposed amendment shall be entered on the Journals, and that such amendment shall be submitted to the people for ratification, it requires that a separate law must be enacted and approved by the Governor as other laws for an election upon the ratification of such amendment.—Hatch v. Stoneman, 66 Cal., 632.

Ratifying an amendment by a majority vote of the people does not validate an amendment which was not agreed to by both Houses of the General Assembly as required by the Constitution. Koehler v. Hill, 60 Iowa, 543.

It has been held that on the question as to the ratification and validity of constitutional amendments that the Journals of the two Houses, and not the final resolution as to the amendment, is the primary and best evidence of the proposed amendment.—*Ib.*

Where an amendment agreed to in the Lower House is different from that agreed to by the Senate, the constitutional amendment is invalid.—*Ib.*

The Secretary of the Senate and Clerk of the House have authority to spread proposed amendments to the Constitution on the Journals of their respective Houses after it has been voted for by the required number of members, and they may do so without express authority from the Houses.—State v. Mason, 43 La., 590.

The resolution proposing the constitutional amendment need not be read on three different days in each House, as an ordinary bill, unless the Constitution expressly so provides.—Edwards v. Lesueur, 132 Mo., 410.

If the Constitution does not prescribe whether an amendment to the Constitution shall be made by a bill or joint resolution, it is not the province of the Governor to say whether it shall be by one or the other, and does not justify him in retaining the bill or resolution for

*Mode of Amending the Constitution.*

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thereof, the proposed amendments shall be sent to the other House, in which they shall likewise be read on three several days, and if upon the third reading three-fifths of all the members elected to that House shall vote in favor of the proposed amendments, the Legislature shall order an election by the qualified electors of the State upon such proposed amendments, to be held either at the general election next succeeding the ses-

1875.—ARTICLE XVII.

next general election for Representatives, for the consideration of the people; and it shall be the duty of the several returning officers, at the next general election which shall be held for Representatives, to open a poll for the vote of the qualified electors on the proposed amendments, and to make a return of said vote to the Secretary of State; and, if it shall thereupon appear that a majority of all the qualified electors of the State, who voted

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that purpose without approving.—25 Neb., 864.

A title to a bill to amend the Constitution is unnecessary; that is required only in case of ordinary legislation, and if it is added it may be disregarded. A failure to make an entry of acts or resolutions for constitutional amendments renders them invalid where the Constitution requires such entry.—State v. Tuffy, 19 Nev., 391.

A resolution proposing an amendment to Constitution does not require the approval of the executive, the President or Governor; the approval of the officer applies only to ordinary legislation, and not to constitutional amendment, and his veto would be without any effect whatever.—Hollingsworth v. Virginia, 3 Dall., 378; State v. Mason, 43 La., 590; 25 Neb., 864.

Where the Constitution requires publication of proceedings as to amendments, the publication is essential to the validity of any amendment, and that amendment voted on without compliance with such requirements is inoperative.—State v. Davis, 20 Nev., 220; State v. Tooker, 15 Mont., 8.

The 5th and 6th amendments of the Federal Constitution are restrictions upon the power of Congress. The 9th amendment does not restrain the power of the States. None of the first ten amendments limit the power reserved by the States; they apply only to the powers of the general Government. The 5th is a restraint on the legislative as well as the executive and judicial powers of the Government, in fact, all of the first ten amendments are limitations upon the power of the Federal Government, and not upon the States.—Justice v. Murray, 9 Wall., 278; Brown v. New Jersey, 175 U. S., 174.

The first ten amendments were not intended to lay down any novel principles of government, but were intended merely to declare certain guaranties and immunities inherited from our English ancestors, and from time immemorial subject to exceptions arising from the necessity of the case.—Robertson v. Baldwin, 165 U. S., 281.

The 14th amendment of the Federal Constitution refers to State actions exclusively, and not to acts of individuals. It extends equal protection of civil as distinguished from political rights, but these rights cannot be impaired by wrongful acts of individuals unsupported by State authority. This amendment permits diversity in State courts, but it secures to all persons within the respective jurisdiction, an equal right in like cases This amendment conferred no new rights, but only extended the protection of the Constitution over the rights of life, liberty and property that previously existed in all State Constitutions.—Mobile Co. v. Tenn., 153 U. S., 506.

It nullifies all State legislation and State actions which could impair privileges of citizens or injure the life, liberty or property without process of law, or by denying the equal protection of laws.—Civil Rights cases, 109 U. S., 11.

It extended to all acts of the State through its executive, legislative or judicial authorities. Scott v. McNeal, 154 U. S., 45.

It does not override or change public vested rights existing in the nature of easements which were valid under the Constitution and laws of the State at the time of the passage of the amendment.—Eldridge v. Trezevant, 160 U. S., 468.

But it refers to all of the instrumentalities of the State and covers acts of the State officers who act as such officers. At the time of the adoption of this amendment there was no general rule of international law recognized by the civilized nations inconsistent with the ancient rules of citizenship by birth within the dominion—U. S. v. Wong Kim Ark, 169 U. S., 666.

But it does not secure to all persons within the United States the benefit of the same laws and the same remedies; it added no new privileges or immunities, it merely furnished an additional guaranty. It was not intended to regulate the forms of procedure in State courts, but only to secure substantial rights. It was not designed to interfere with the police powers of the States which were reserved at the time the original Constitution was adopted, which the State may exercise for the protection of public health, the prevention of fraud, etc. It does not even limit the subjects upon which the power may be exercised. It does not affect State rights, or the jurisdiction thereof.

An Act which provides that if voter does not erase matter on ticket, it shall constitute a vote in favor of the proposed amendment, is valid. —May & Thomas Co. v. Mayor of Birmingham, 123 Ala., 300.

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sion of the Legislature at which the amendments are proposed or upon another day appointed by the Legislature, not less than three months after the final adjournment of the session of the Legislature at which the amendments were proposed. Notice of such election, together with the proposed amendments, shall be given by proclamation of the Governor, which shall be published in every county in such manner as the Legislature shall direct, for at least eight successive weeks next preceding the day appointed for such election. On the day so appointed an election shall be held for the vote of the qualified electors of the State upon the proposed amendments. If such election be held on the day of the general election, the officers of such general election shall open a poll for the vote of the qualified electors upon the proposed amendments; if it be held on a day other than that of a general election, officers for such election shall be appointed; and the election shall be held in all things in accordance with the law governing general elections. In all elections upon such proposed amendments, the votes cast thereat shall be canvassed, tabulated, and returns thereof be made to the Secretary of State, and counted, in the same manner as in elections for Representatives to the Legislature; and if it shall thereupon appear that a majority of the qualified electors who voted at such election upon the proposed amendments voted in favor of the same, such amendments shall be valid to all intents and purposes as parts of this Constitution. The result of such election shall be made known by proclamation of the Governor. Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.

SEC. 285. Upon the ballots used at all elections provided for in Section 284 of this Constitution the substance or subject-matter of each proposed amendment shall be so printed that the nature thereof shall be clearly indicated. Following each proposed amendment on the ballot

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at said election, voted in favor of the proposed amendments, said amendments shall be valid, to all intents and purposes, as parts of this Constitution; and the result of such election shall be made known by proclamation of the Governor.

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shall be printed the word "Yes" and immediately under that shall be printed the word "No." The choice of the elector shall be indicated by a cross mark made by him or under his direction, opposite the word expressing his desire, and no amendment shall be adopted unless it receives the affirmative vote of a majority of all the qualified electors who vote at such election.

SEC. 286. No convention shall hereafter be held for the purpose of altering or amending the Constitution of this State, unless after the Legislature by a vote of a majority of all the members elected to each House has passed an act or resolution calling a convention for such purpose, the question of Convention or No Convention shall be first submitted to a vote of all the qualified electors of the State, and approved by a majority of those voting at such election. No act or resolution of the Legislature calling a convention for the purpose of altering or amending the Constitution of this State, shall be repealed except upon the vote of a majority of all the members elected to each House at the same session at which such act or resolution was passed; provided, nothing herein contained shall be construed as restricting the jurisdiction and power of the Convention, when duly assembled in pursuance of this section, to establish such ordinances and to do and perform such things as to the Convention may seem necessary or proper for the purpose of altering, revising or amending the existing Constitution.

SEC. 287. All votes of the Legislature upon proposed amendments to this Constitution, and upon bills or resolutions calling a Convention for the purpose of altering or amending the Constitution of this State, shall be taken by yeas and nays and entered on the Journals. No act or resolution of the Legislature passed in accordance with the provisions of this article, proposing amendments to this Constitution, or calling a convention for the purpose of altering or amending the Constitution of this State, shall be

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SEC. 2. No convention shall hereafter be held for the purpose of altering or amending the Constitution of this State, unless the question of convention or no convention shall first be submitted to a vote of all the electors of the State, and approved by a majority of those voting at said election.

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submitted for the approval of the Governor, but shall be valid without his approval.

## SCHEDULE.

In order that no injury or inconvenience may arise from the alterations and amendments made by this Constitution to the existing Constitution of this State, and to carry this Constitution into effect, it is hereby ordained and declared:

1. That all laws in force at the ratification of this Constitution and not inconsistent therewith, shall remain in full force until altered or repealed by the Legislature; and all rights, actions, prosecutions, claims and contracts of the State, counties, municipal corporations, individuals or bodies corporate, not inconsistent with this Constitution, shall continue to be valid as if this Constitution had not been ratified.

2. That all bonds executed by or to any officer of this State, all recognizances, obligations, and all other instruments executed to this State, or to any subdivision or municipality thereof, before the ratification of this Constitution, and all fines, taxes, penalties and forfeitures due and owing to the State, or any subdivision or municipality thereof; and all writs, suits, prosecutions, claims and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the ratification of this Constitution. All indictments which have been found, or which may hereafter be found, for any crime or offense committed before the ratification of this Constitution, shall be proceeded upon in the same manner as if this Constitution had not been ratified.

3. That all the executive and judicial officers, and all other officers in this State, who were elected at the elections held in this State on the first Monday in August, in the years eighteen hundred and ninety-eight and nineteen hundred, or who have been appointed since that time, and all members of the present General Assembly, and all who may be

1875.— SCHEDULE.

## SCHEDULE.

In order that no injury or inconvenience may arise from the alterations and amendments made by this Constitution to the existing Constitution of this State, and to carry this Constitution into effect, it is hereby ordained and declared —

1. That all laws in force at the ratification of this Constitution, and not inconsistent therewith, shall remain in full force, until altered or repealed by the General Assembly; and all rights, actions, prosecutions, claims, and contracts of this State, counties, individuals, or bodies corporate, not inconsistent with this Constitution, shall continue to be as valid as if this Constitution had not been ratified.

2. That all bonds executed by or to any officer of this State, all recognizances, obligations, and all other instruments executed to this State, or any subdivision or municipality thereof, before the ratification of this Constitution, and all fines, taxes, penalties, and forfeitures due and owing to this State, or any subdivision, or to any municipality thereof; and all writs, suits, prosecutions, claims, and causes of action, except as herein otherwise provided, shall continue and remain unaffected by the ratification of this Constitution. All indictments which may have been found, or which may hereafter be found, for any crime or offense committed before the ratification of this Constitution, shall be proceeded upon in the same manner as if this Constitution had not been ratified.

3. That all the executive and judicial officers, and all other officers in this State, who shall have been elected at the election held in this State, on third day of November, eighteen hundred and seventy-four, or who may have been appointed since that time, and all members of the present General Assembly, and all that may hereafter be elected members

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hereafter elected members of the present General Assembly, and all other officers holding office at the time of the ratification of this Constitution, shall, except as otherwise provided in this Constitution, continue in office and exercise the duties thereof until their respective terms shall expire, as provided by the Constitution of eighteen hundred and seventy-five, or the laws of this State.

4. This Constitution shall be submitted to the qualified electors of this State for ratification or rejection, as authorized and required by an act of the General Assembly of this State, entitled "An Act to provide for holding a Convention to revise and amend the Constitution of this State," approved the eleventh day of December, nineteen hundred; and no elector shall be deprived of his right to vote at the election to be held for such purpose by reason of his not being registered.

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of the present General Assembly, and all other officers holding office at the time of the ratification of this Constitution, except such as hold office under any act of the General Assembly, shall continue in office, and exercise the duties thereof until their respective terms shall expire, as provided by the present Constitution and laws of this State.

4. This Constitution shall be submitted to the qualified electors of this State for ratification or rejection, as authorized and required by an act of the General Assembly of this State, entitled "An Act to provide for the calling of a convention to revise and amend the Constitution of this State," approved nineteenth day of March, Anno Domini eighteen hundred and seventy-five.

5. If at said election the said Constitution shall be found to have been ratified by a majority of all the qualified electors voting at said election, the said new

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[SEC. 4.]—

Where the Constitution provides that amendments shall be ratified or rejected at an election for Senators and Representatives, and shall be determined by a majority of the electors voting at such election, the voting is determined by the majority of those votes cast in the state at such election for Senators and Representatives.—State v. Babcock, 17 Neb., 188; State v. Foraker, 46 Ohio, St., 677.

Where the Constitution requires a majority of the electors of the State to ratify an amendment to the Constitution, the whole number of votes cast at an election may be taken as the number of electors of the State. If the amendment fails to be adopted or rejected by the required majority, the Legislature may resubmit the amendment.—State v. Swift, 69 Ind., 505.

It has been held where two amendments were submitted for ratification at the same time, and that if the majority of the vote cast upon it was for ratification, that both amendments would be held to be ratified.—24 Kansas, 700.

An act of the Legislature proposing amendments to the Constitution under the provisions of the Constitution of Louisiana was held to have no force or effect until it was ratified by vote of the people. If the Legislature calls a constitutional convention in accordance with the then existing Constitution for the purpose of framing a new Constitution, and not for amending any specified part, and the act does not require that the Constitution adopted shall be ratified by vote of the people, it is not necessary to the validity of the Constitution that it should be so ratified. The submission of a Constitutional amendment to the vote of the people should not be restrained because the provision delegates certain powers of government to other officials or departments.—Edwards v. Lesueur, 132 Mo., 40.

Where the questions were to prohibit "the manufacture, sale and keeping for sale of intoxicating liquors as beverages," and a license to regulate "the manufacture, sale and keeping for sale of intoxicating liquor as a beverage," are independent and separate propositions and amendments and should be separately submitted to the electors for the approval or rejection.—25 Neb., 864.

The words "voting thereon" were held to refer to "a majority of the electors," and not "members of the Legislature," where the provision of the Constitution was "the people shall approve and ratify such amendment by a majority of the electors qualified to vote for the members of the Legislature voting thereon."—State v. Board of Examiners, 21 Nev., 67.

The Legislature may submit several distinct propositions for ratification or rejection as one amendment to the Constitution, if they all relate to the same subject-matter, and are designed to accomplish the same purpose.—State v. Timme, 54 Wis., 318.

*Schedule.*

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5. That instead of the publication as required by the act to provide for holding a convention to revise and amend the Constitution, approved the eleventh day of December, nineteen hundred, the Governor of this State is hereby authorized to take such steps as will give general publicity and circulation to this Constitution in a manner as economical as practicable.

6. The salaries of the executive and judicial and all other officers of this State, who may be holding office at the time of the ratification of this Constitution, and the payment of the present members of the General Assembly, shall not be affected by the provisions of this Constitution.

Done by the people of Alabama, through their delegates in convention assembled in the hall of the House of Representatives, at Montgomery, Alabama, this, the third day of September, Anno Domini nineteen hundred and one.

JOHN B. KNOX, *President.*

*Attest:* FRANK N. JULIAN, *Secretary.*

DAVID C. ALMON,
W. A. ALTMAN,
JOHN T. ASHCRAFT,
W. H. BANKS,
J. H. BAREFIELD,
W. H. BARTLETT,
J. ROBERT BEAVERS,
C. P. BEDDOW,
D. S. BETHUNE,
SAMUEL BLACKWELL,
BURWELL BOYKIN BOONE,

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Constitution, so ratified, shall go into effect as the new Constitution of the State of Alabama within the time stated in the proclamation of the Governor, and shall thereafter be binding and obligatory as such upon all the people of this State, according to the provisions of said act, approved nineteenth day of March, Anno Domini eighteen hundred and seventy-five.

6. That instead of the publication as required by Section Twelve of said act, the Governor of the State is hereby authorized to take such steps as will give general publicity and circulation to this Constitution in as economical manner as practicable.

7. That all laws requiring an enumeration of the inhabitants of this State during the year eighteen hundred and seventy-five are hereby avoided.

8. That the Board of Education of this State is hereby abolished.

9. The salaries of the executive and judicial, and all other officers of this State who may be holding office at the time of the ratification of this Constitution, and the pay of the present members of the General Assembly, shall not be affected by the provisions of this Constitution.

LEROY POPE WALKER, *President.*

JOHN F. BURNS,
J. H. WHITE,
SUMPTER LEA,
WM. A. SMITH,
R. A. MCCLELLAN,
E. D. WILLETT,
RUFUS W. COBB,
JOHN W. INZER,
WM. G. LITTLE, JR.,
W. GARRETT,
JOHN MANASCO,
LEWIS M. STONE,
WILEY COLEMAN,
ANDREW C. HARGROVE,
EVAN G. RICHARDS,
HENRY W. LAIRD,
WM. J. O'BANNON,
GEO. S. GULLETT,

*Schedule.*

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LESLIE E. BROOKS,
CECIL BROWNE,
THOMAS L. BULGER,
JOHN D. BURNETT,
JOHN F. BURNS (1875-1901),
JOHN A. BYARS,
H. W. CARDON,
A. H. CARMICHAEL,
M. S. CARMICHAEL,
G. H. CARNATHAN,
DAVY CROCKETT CASE,
REUBEN CHAPMAN,
JAMES EDWARD COBB,
W. T. L. COFER,
THOMAS W. COLEMAN,
E. W. COLEMAN,
THOMAS J. CORNWELL,
B. H. CRAIG,
R. M. CUNNINGHAM,
JOHN A. DAVIS,
HUBERT T. DAVIS,
S. H. DENT,
ED. DEGRAFFENRIED,
JOSEPH B. DUKE,
B. T. ELEY,
JOHN C. EYSTER,
T. M. EPSY,
CHARLES W. FERGUSON,
WILLIAM C. FITTS,
A. S. FLETCHER,
J. M. FOSTER,
N. H. FREEMAN,
J. A. GILMORE,
WILLIAM FRANKLIN GLOVER,
EDWARD A. GRAHAM,
JOSEPH B. GRAHAM,
L. W. GRANT,
JOHN W. GRAYSON,
LEONARD F. GREER, SR.,
CHARLES H. GREER,
C. L. HALEY,
WILLIAM A. HANDLEY,
GEO. P. HARRISON (1875-1901),
J. THOMAS HEFLIN,
JOHN T. HEFLIN,
JERE C. HENDERSON,
EVANS HINSON,
PATRICK W. HODGES,
OLIVER R. HOOD,
WILSON P. HOWELL,
AUGUSTIN CLAYTON HOWZE,
W. B. INGE,
E. C. JACKSON,

1875.— SCHEDULE.

GEO. W. DELBRIDGE,
ANDREW J. INGLE,
FRANK A. NISBET,
JOHN GAMBLE,
ISAAC H. PARKS,
HENRY C. LEA,
JOEL D. MURPHREE,
J. B. KELLY,
J. N. SWAN,
F. W. SYKES,
E. H. MOREN,
WM. C. OATES,
STEPHEN C. ALLGOOD,
SAMUEL J. BOLLING,
LEROY BREWER,
JOHN T. HEFLIN,
JULIUS G. ROBINSON,
SAMUEL FORWOOD,
JOHN GREEN,
ROBERT A. LONG,
CHARLES C. LANGDON,
F. S. LYON,
HENRY A. WOOLF,
WM. M. HAMES,
THOS. J. BURTON,
B. F. JOHNSON,
ALBURTO MARTIN,
R. C. TORREY,
M. T. AKERS,
ALBERT W. PLOWMAN,
WM. A. MUSGROVE,
JAMES D. MEADOWS,
W. J. SAMFORD,
GEO. P. HARRISON, JR.,
JOHN D. RATHER,
CEPHAS B. TAYLOR,
BENJ. F. WEATHERS,
MICAJAH L. DAVIS,
J. W. JONES,
JOHN S. DICKINSON,
WM. BURGESS,
P. M. CALLOWAY,
JOHN P. RALLS, M.D.,
WM. S. MUDD,
JOHN A. FOSTER,
JAMES L. PUGH,
JOS. E. P. FLOURNOY,
JOHN D. HUDSON,
R. O. PICKETT,
RICHARD H. POWELL,
E. A. O'NEAL,
THOMAS B. NESMITH,
WM. GREEN,

*Schedule.*

1901.— SCHEDULE.

SAMUEL C. JENKINS,
JOHN C. JONES,
J. MCLEAN JONES,
THOMAS G. JONES,
RICHARD C. JONES,
JAMES T. KIRK,
W. W. KIRKLAND,
WILLIAM N. KNIGHT,
R. B. KYLE,
EMMETT W. LEDBETTER,
NORVILLE R. LEIGH, JR.,
LAWRENCE W. LOCKLIN,
TENNENT LOMAX,
J. LEE LONG,
T. L. LONG,
ROBERT J. LOWE,
WILLIAM T. LOWE,
GORDON MACDONALD,
B. F. MCMILLAN,
LEE MCMILLAN,
GEORGE H. MALONE,
J. T. MARTIN,
J. C. MAXWELL,
ALLEN H. MERRILL,
CHARLES H. MILLER,
JOSEPH N. MILLER,
MILO MOODY,
W. O. MULKEY,
JOEL D. MURPHREE (1875-1901),
C. C. NESMITH,
J. D. NORMAN,
JOSEPH NORWOOD,
WM. C. OATES (1875-1901),
EMMETT O'NEAL,
JOHN W. O'NEIL,
HENRY OPP,
RUFUS A. O'REAR,
DABNEY PALMER,
GEORGE H. PARKER,
JOHN H. PARKER, SR.,
JAMES P. PEARCE,
ERLE PETTUS,
E. A. PHILLIPS,
HARRY PILLANS,
P. H. PITTS,
JOHN H. PORTER,
JOHN FRANKLIN PROCTOR,
HENRY FONTAINE REESE (Dallas),
N. P. RENFRO,
R. J. REYNOLDS,
J. J. ROBINSON,
C. P. ROGERS, SR.,

1875.— SCHEDULE.

JAMES AIKEN,
E. A. POWELL,
A. C. GORDON,
CULLEN A. BATTLE,
JONATHAN BLISS,
D. B. BOOTH,
S. T. PRINCE,
A. A. STERRITT,
H. J. LIVINGSTON,
WM. M. LOWE,
S. S. SCOTT,
CHARLES GIBSON,
THOMAS H. HERNDON,
JESSE E. BROWN,
DAVID S. NOWLIN,
JOHN H. NORWOOD,
MONTGOMERY GILBREATH.

*Attest:* BENJ. H. SCREWS, *Secretary.*

1901.— SCHEDULE.

JOHN ADUSTON ROGERS of Sumter County, Ala.,
WM. HODGES SAMFORD,
W. T. SANDERS,
JOHN WILLIAM AUGUSTINE SANFORD,
GEORGE A. SEARCY,
HENRY C. SELHEIMER,
JAMES O. SENTELL,
J. B. SLOAN, JR.,
GREGORY L. SMITH,
MAC. A. SMITH,
MORGAN M. SMITH,
M. SOLLIE,
GEORGE A. SORRELL,
NAPOLEON B. SPEARS,
ROBERT E. SPRAGINS,
J. H. STEWART,
W. H. TAYLOE,
J. F. THOMPSON,
WATKINS M. VAUGHAN,
BOSWELL DEGRAFFENRIED WADDELL,
RICHARD W. WALKER,
THOMAS H. WATTS,
JOHN B. WEAKLEY,
JAMES WEATHERLY,
FRANK S. WHITE,
W. W. WHITESIDE,
JERE N. WILLIAMS,
GESNER WILLIAMS (Marengo),
ARTHUR E. WILLIAMS,
MASSEY WILSON,
EDWARD P. WILSON,
JAMES J. WINN,
E. R. MORRISETTE,
E. D. WILLETT.

# SUMMARY OF THE DIFFERENCES

## BETWEEN THE CONSTITUTIONS OF 1901 AND 1875 AS COMPARED AND CONTRASTED SECTION BY SECTION.

### PREAMBLE.

The preambles are substantially alike, being a slight change in verbiage and the omission from the Constitution of 1901 of the phrase, "To provide for the common defense and promote the general welfare."

### BILL OR DECLARATION OF RIGHTS.

The Bills or Declarations of Rights in the two Constitutions as a whole are substantially alike with the slight variations and changes hereinafter pointed out.

THAT ALL MEN ARE EQUALLY FREE AND INDEPENDENT, endowed by the Creator with certain inalienable rights, etc. This provision is identical in both Constitutions. Sec. 1, pp. 2 and 3.

THAT ALL RESIDENTS IN THE STATE, born in the United States, who have declared their intention to become citizens of the United States, declared citizens of the State, possessing equal civil and political rights. This provision is omitted from the Constitution of 1901. Sec, 2, Const. 1875, pp. 3 and 4.

POLITICAL POWER INHERENT IN THE PEOPLE; free government founded on their authority, instituted for their benefit with right to change form of government. Is same in both Constitutions. Sec. 2, p. 4.

RELIGION SHALL NOT BE ESTABLISHED BY LAW, nor required as a qualification for office of public trust; no person shall be compelled to attend any place of worship, or pay tithes, taxes, etc., for maintaining the ministry. This provision is practically the same in both Constitutions. Sec. 3, pp. 4 and 5.

LIBERTY OF SPEECH AND PRESS GUARANTEED.—This provision is practically the same in both with the exception that the Constitution of 1901 inhibits the passage of a law to curtail or restrain it, while that of 1875 simply declared it as one of the rights. Sec. 4, pp. 5 and 6.

UNREASONABLE SEARCHES AND SEIZURES PROHIBITED and search warrants prohibited except upon probable cause supported by oath. This provision is practically the same in both Constitutions. Sec. 5, pp. 6 and 7.

CRIMINAL PROSECUTIONS, RIGHT OF ACCUSED TO BE HEARD by himself and counsel, to demand the nature and cause of accusation, to have copy thereof, to be confronted by witnesses and have compulsory process for his witnesses; to testify in his own behalf; to have a speedy public trial by impartial jury; shall not be compelled to give evidence against himself or deprived of his property except by due process of law. Is contained in both Constitutions, but the Constitution of 1901 provides that the Legislature may by general law provide for a change of venue at the instance of the defendant, and that an application may be heard in the absence of accused if legally imprisoned or confined at the time. This was not contained in the Constitution of 1875. Sec. 6, pp. 7-10.

NO ARREST OR DETENTION EXCEPT IN CASES ASCERTAINED by law according to the form prescribed, and no punishment except by virtue of law established and promulgated prior to the offense legally applied. This provision is the same in both Constitutions. Sec. 7, pp. 10 and 11.

CRIMINAL PROSECUTION BY INFORMATION DENIED except in certain cases, is practically the same in both Constitutions, being a slight change in the verbiage, but none in effect. Sec. 8. pp. 11 and 12.

JEOPARDY.—Accused cannot be twice put in jeopardy of life or limb. This is declared in both Constitutions, but the Constitution of 1901 further provides that the courts may discharge juries for reasons fixed by law, and that no one shall gain advantage thereby. This provision is not contained in the Constitution of 1875. Sec. 9, pp. 12 and 13.

CIVIL SUITS.—No persons shall be barred from prosecuting or defending by himself or counsel any civil action to which he is a party. This provision is the same in both Constitutions. Sec. 10, p. 13.

JURY TRIAL, right of shall remain inviolate. This is indentical in both Constitutions. Sec. 11, pp. 13 and 14.

LIBEL, PROSECUTION FOR. — Truth of may be given in evidence in certain cases; jury shall determine the law and the facts under direction of court. The Constitution of 1875 did not allow the truth of the publication to be given in evidence in all prosecutions for libel, but only in case of publication investigating the official conduct of officers, etc. The Constitution of 1901 extends this provision to all prosecutions for libel. That the jury should determine the law and the facts under the direction of the court is contained in both Constitutions. Sec. 12, p. 14.

COURTS OPEN TO ALL PERSONS; all persons shall have remedy by due process of law; right and justice administered without sale, denial or delay; these provisions are the same in both Constitutions. Sec. 12, pp. 14 and 15.

STATE SHALL NOT BE A DEFENDANT IN ANY COURT.—The same in both Constitutions. Sec. 14, p. 15.

FINES SHALL NOT BE EXCESSIVE, PUNISHMENT SHALL NOT BE UNUSUAL OR CRUEL.—Same in both Constitutions. Sec. 15, p. 15.

BAIL, right of shall not be denied except for capital offenses when proof is evident or presumption great, and shall not be excessive in any case. These provisions are the same in both Constitutions. Sec. 16, pp. 15 and 16.

HABEAS CORPUS, right of shall not be suspended. This is the same in both Constitutions. Sec. 17, p. 16.

TREASON DEFINED; no conviction except on testimony of two witnesses or on confession in open court. Same in both Constitutions. Sec. 18, p. 16.

Treason, NO PERSON SHALL BE ATTAINTED OF by Legislature. Conviction shall not work corruption of blood or forfeiture of estate. Same in both Constitutions. Sec. 19, pp. 16 and 17.

IMPRISONMENT FOR DEBT PROHIBITED. —Same in both Constitutions. Sec. 20, p. 17.

EX POST FACTO LAW, IMPAIRING OBLIGATION OF CONTRACT, irrevocable grants of special privileges and immunities prohibited and denied by both Constitutions. The Constitution of 1901 further provides that every grant, franchise, privilege or immunity shall remain subject to revocation, alteration or amendment; this was not provided for in Constitution of 1875. Sec. 22, pp. 17-23.

EMINENT DOMAIN.—Rights of shall not be abridged; property of individuals or corporations taken for public use, not taken for private use without the consent of the owner except as right of way, but just compensation shall in all cases be first made therefor. These provisions are substantially the same in both Constitutions, being a slight change in verbiage. Sec. 23, pp. 23-26.

NAVIGABLE WATERS, DECLARED PUBLIC HIGHWAYS, free to the citizens of the State and United States without tax, toll or wharfage, except as authorized by law. These provisions are substantially the same in both Constitutions. Sec. 24, p. 26.

ASSEMBLAGE, PETITION, ADDRESS OR REMONSTRANCE, right of preserved to the citizen. These provisions are the same in both Constitutions. Sec. 25, p. 26.

ARMS, RIGHT TO BEAR in defense of self and State, preserved in both Constitutions. Sec. 26, p. 26.

ARMY, STANDING ARMY SHALL NOT BE KEPT without consent of Legislature; appropriation not for longer term than one

year; military in subordination to civil power. This provision is the same in both Constitutions. Sec. 27, pp. 26, 27.

SOLDIERS.—Soldiers shall not be quartered in any house in time of peace without consent of the owner, nor in time of war, but as provided by law. Sec. 28, p. 27.

TITLE OF NOBILITY, HEREDITARY DISTINCTION OR PRIVILEGE shall never be granted; office shall not be for longer time than good behavior. This provision is the same in both Constitutions. Sec. 29, p. 27.

IMMIGRATION shall be ENCOURAGED, EMIGRATION shall NOT be PROHIBITED, no citizen shall be exiled. Same in both Constitutions. Sec. 30, p. 27.

ABSENCE FROM STATE, temporary, shall not forfeit residence; same in both Constitutions. Sec. 31, p. 27.

SLAVERY, prohibited; involuntary servitude except as punishment for crime denied. Sec. 32, p. 27.

SUFFRAGE, privilege of protected by law. Same in both Constitutions. Sec. 33, p. 27.

SECESSION; right of denied. Sec. 35, Constitution of 1875; this provision was omitted from the Constitution of 1901, p. 27.

FOREIGNER; foreign residents may possess or inherit proprety. Same in both Constitutions. Sec. 34, p. 27.

GOVERNMENT.—Sole OBJECT AND END OF to protect citizens. Same in both Constitutions. Sec. 35, p. 28.

SUFFRAGE AND OFFICE.—Educational or property qualifications and restraint upon, on account of race, color or previous condition of servitude denied. Sec. 38, Constitution of 1875. This provision was omitted from the Constitution of 1901, p. 28.

ENUMERATION OF RIGHTS, does not deny or impair other rights retained by the people. This is contained in both Constitutions, but the Constitution of 1901 further provides that everything in the declaration of rights is excepted out of the general powers of the Government, and shall remain forever inviolate, which provision is not contained in the Constitution of 1875. Sec. 36, p. 28.

## STATE AND COUNTY BOUNDARIES.

The boundaries of the State are the same with the exception that the Constitution of 1901 adds the following proviso: "That the limits of the State shall extend to and include any other territory hereafter acquired by contract or agreement with other States, though not included within present boundaries." Sec. 37, pp. 28, 29.

COUNTY BOUNDARIES.—The Constitution of 1901 contains all the provisions as to county boundaries which the Constitution of 1875 contained—that is, the county boundaries as they now exist are ratified; that it shall require a two-thirds vote of both houses of the Legislature to change boundaries of the counties; that the extent of the county shall not be less than 600 square miles; that each county shall have enough inhabitants to entitle it to one representative in the lower house; that no new county shall be formed so as to leave the counties from which it was taken with less than 600 square miles and with a less number of inhabitants than to entitle it to one representative. The Constitution of 1901 adds the following: "That no county line shall be altered so as to run within seven miles of the courthouse of an old county; that no courthouse or county site shall be removed except by a majority of the qualified electors voting at an election held for such purpose," excepting from the operation, the county of Shelby. Secs, 38-41, pp. 29, 30. It also provides that a new county might be formed from the counties of Henry, Dale and Geneva, so as to leave those counties with not less than 500 square miles. (The county of Houston has since been formed out of those counties, see Acts 1903, p. 44.)

## DISTRIBUTION OF POWERS OF GOVERNMENT.

Divided into three distinct departments, Legislative, Executive, and Judicial. The same in both Constitutions. Sec. 42, pp. 30-32.

No one department shall exercise any power belonging to another department

unless the Constitution expressly permits it. This provision is substantially the same in both, though made a little more explicit, emphatic and absolute, if possible, in the Constitution of 1901 than in that of 1875, and it concludes with the phrase, "to the end that it may be a government of laws and not of men," which is not contained in the Constitution of 1875. It will also be noticed that the phrase "properly belonging to the other or the others" is not used in the Constitution of 1901. Whether this omission has any significance could only be determined by a judicial construction of the two sections. Sec. 43, p. 32.

LEGISLATIVE DEPARTMENT.—It will be noticed throughout the Constitution of 1901 that the term "General Assembly" is not used, but that the word "Legislature" is substituted therefor and designates the law-making power whereas in the Constitution of 1875 the law-making power was designated by the term "General Assembly." The law-making power of the State consists of a Senate and a House of Representatives, the same in both Constitutions, with the exception mentioned above. Sec. 44, pp. 32-35.

STYLE OF LAWS.—In the Constitution of 1901 it is, "Be it enacted by the Legislature of Alabama," whereas in the Constitution of 1875 it was, "Be it enacted by the General Assembly of Alabama." The style of the law need not be repeated in each section of the Act as was the practice under the Constitution of 1875, but the Act may be divided into sections for convenience according to substance which may be designated merely by figures. This provision was not contained in the Constitution of 1875. Each Constitution provided that the law should contain but one subject which should be clearly expressed in the title, except general appropriation bills, revenue bills, bills adopting Code, Digest or Revision of Statutes, and that no law should be revived, amended, or extended by reference to its title only, but so much as is revived, etc., shall be re-enacted and published at length. Sec. 45, pp. 36-44.

SENATORS AND REPRESENTATIVES, TERMS OF OFFICE; TIMES OF ELECTING.—Under the Constitution of 1875 the terms of office of Senators was four years, and those of Representatives two years, commencing the day after the general election which was the first Monday in August, 1876, and every two years thereafter, one-half of the Senators and all of the Representatives being elected every two years. The Constitution of 1901 provides that the terms of office of Senators and Representatives shall be four years; that the Representatives and the Senators for the even numbered districts and the thirty-fifth should be elected at the general election in 1902, and hold office for a term of four years, and that the Senators who then represented the odd-numbered districts should hold office until the day after the general election in the year 1906, and that in the year 1906, and every four years thereafter, all the Senators and Representatives should be elected. The Constitution of 1875 provided that the General Assembly might change the time of holding elections for the Representatives and Senators, this was omitted from the Constitution of 1901.

## VACANCIES IN OFFICE OF SENATORS AND REPRESENTATIVES.

Both Constitutions provide that in case of vacancies in office of Representatives and Senators that Governor shall issue a writ of election to fill the vacancy for the remainder of the term. Sec. 46, p. 44.

ELIGIBILITY OF SENATORS AND REPRESENTATIVES.—The Constitution of 1901 provides that Senators shall be twenty-five years of age, while that of 1875 fixed the age at twenty-seven; both fix the age of Representatives at twenty-one; both provide that they shall be residents of the State for three years, and their respective counties or districts for one year next before the election, and that they shall reside in their counties or districts during their term of office. Sec. 47, p. 45.

TIME AND PLACE OF MEETING OF LEGISLATURE.—Under the Constitution of 1901 the Legislature meets every four years at the capitol, on the second Tuesday in January, and shall not remain in session longer than sixty days at first session, and fifty at subsequent session, while under the Constitution of 1875 it met

every two years, and remained in session not more than sixty days. Under the Constitution of 1901 the Governor may convene the Legislature at a different place than the Capitol, or remove it as necessity may require; under the Constitution of 1875 the Governor could only remove it in case of epidemic or destruction of the capital. Sec. 48, p. 45.

PAY AND COMPENSATION OF MEMBERS of the Legislature.—Compensation is fixed at $4.00 per day and $0.10 per mile going and returning by nearest route. Sec. 49. p. 45.

NUMBER OF MEMBERS OF LEGISLATURE. —The Constitution of 1901 fixed the maximum number of Senators at thirty-five, and Representatives at one hundred and five; the Constitution of 1875 fixed the number of Senators at thirty-three, and members of the House, one hundred. Sec. 50, p. 45.

PRESIDENT OF THE SENATE, AND SPEAKER OF THE HOUSE.—Under the Constitution of 1901 the Lieutenant Governor is ex-officio President of the Senate. This office was not provided for in the Constitution of 1875, but the Senate elected a President from its members at each session. The President pro tem, who presides in the absence of the Lieutenant Governor. In case of temporary disability of either presiding officer, the House to which he belongs elects one of its members to preside during the continuance of such disability. Each House chooses its own officers, and is the exclusive judge of the election, return and qualification of such members. Sec. 51, p. 46.

QUORUM OF LEGISLATURE.—A majority of each House constitutes a quorum, but a smaller number may adjourn from day to day and compel attendance of absent members under penalties. Sec. 52, p. 46.

RULES OF LEGISLATURE.—Each House determines its own rules, punishes its members and others for contempt, and forces obedience to its process. Sec. 53, p. 46.

EXPULSION OF MEMBERS of Legislature.—Two-thirds of either House may expel one of its members, and member expelled shall not be eligible to either House. Secs. 53, 54, pp. 46, 47.

JOURNALS OF LEGISLATURE. — Each House required to keep journals and publish proceedings which do not require secrecy; the yea and nay vote may be required by one-tenth of the members of each House; any member of either House may have his dissent or protest as to any act or resolution entered on the journal. Sec. 55, p. 47.

MEMBERS OF LEGISLATURE, privileged from arrest.—Members are privileged from arrest during attendance on session, and in going to and returning therefrom, and shall not be questioned at any other place for any speech or debate in either House. Sec. 56, p. 48.

DOORS OPEN, PRIVILEGE OF FLOOR OF LEGISLATURE.—The doors of each House shall be kept open except when secrecy may be required; the Constitution of 1901 provides that no person is entitled to the floor of either House while in session except members of the Legislature, officers or employes thereof, the Governor, his Secretary, and representatives of the press, and other persons to whom its privileges are extended by unanimous vote. This was not in the Constitution of 1875. Sec. 57, p. 48.

ADJOURNMENT.—Neither House can adjourn for more than three days without the consent of the other, or to any other place than that in which it is sitting. Sec. 58, p. 48.

MEMBERS NOT APPOINTED TO OFFICE OF TRUST.—Members of the Legislature cannot be appointed to an office of profit or trust which was created while they were members, or the emoluments of which were increased while members, but they may be elected to such office. Sec. 59, pp. 48, 49.

MEMBERS OF LEGISLATURE, ELIGIBILITY OF.—No person convicted of an infamous crime is eligible as a member of or to any office of trust. Sec. 60, p. 49.

OFFICERS, PUBLIC, ELIGIBILITY OF.— No person is eligible to an office of trust or profit who has been convicted of infamous crime. Sec. 60, p. 49.

LAWS, HOW PASSED.—No law shall be passed except by bill, and no bill shall be altered or amended on its passage so as

to change its original purpose. Sec. 61, p. 49.

BILLS, ALTERATION OR AMENDMENT OF.—Bills shall not be amended or altered on their passage so as to change the original purpose. Sec. 61, p. 49.

BILLS REFERRED TO COMMITTEES.—The Constitution of 1901 provides that all bills shall be referred to a standing committee of each House; shall be acted upon by such committees and returned therefrom. The Constitution of 1875 only provided that the bill should be referred to the committee of each house and returned therefrom. (This provision will, no doubt, be the cause of many acts being declared unconstitutional.) Sec. 62, p. 49.

BILLS READ ON THREE DIFFERENT DAYS.—Every bill must be read on three different days in each House; must be read at length on its final passage, and votes taken by yea and nay vote, which must be entered upon the journal. Sec. 63, p. 49.

BILLS, AMENDMENT OF, HOW ADOPTED.—Amendments to bills must be by a majority vote; the names of those voting for and against entered upon the journal of each House in which the amendment is adopted, and the Constitution of 1901 provides that amendment by one House can be concurred in by the other only by a yea and nay vote, which is to be entered upon the journal. Sec. 64, p. 50.

REPORTS OF COMMITTEES OF CONFERENCE.—The reports of committees of conference must be adopted by yea and nay vote, which must be entered upon the journal. Sec. 64, p. 50.

LOTTERIES.—The Legislature cannot authorize lotteries or gift enterprises, and must prohibit the sale of tickets for such purposes or schemes. Sec. 65, p. 50.

BILLS, SIGNING OF.—All bills and joint resolutions must be signed by the presiding officer of each House after they have been publicly read at length, immediately before signing which shall be entered upon the journal. The Constitution of 1901 provides that the reading may be dispensed with by a two-thirds vote of a quorum, which fact must be entered upon the journal. Sec. 66, pp. 50, 51.

OFFICERS, EMPLOYES AND SERVANTS OF LEGISLATURE.—The Legislature must prescribe the duties and compensation of employes and servants of the Legislature, and they must be paid from the State Treasury. Sec. 67. p. 51.

OFFICERS, PUBLIC, FEES, ALLOWANCE, COMPENSATION OF.—No extra compensation, fee, or allowance shall be allowed any public officer, servant, agent or contractor after service shall have been rendered or contract made. Sec. 68, p. 51.

FEES, COMPENSATION, EXTRA NOT ALLOWED.

No extra fees, compensation or allowance shall be allowed for services performed or contract made. Sec. 68, p. 51.

FEES AND COMPENSATION NOT INCREASED DURING TERM OF OFFICE.—The Constitution of 1901 provides that the fees or compensation of any public officer shall not be increased during his term of office except fees for ex officio services or sheriffs fees for feeding, transferring or guarding prisoners. Sec. 68, p. 51. (This last provision will possibly give rise to more litigation than any other provision in the Constitution; it will be difficult indeed to pass many necessary acts without increasing or diminishing the fees of some officer, though not intended; if the officer's fees are diminished, he will litigate; if they are increased, his enemies will litigate.)

CONTRACTS FOR PRINTING, FURNISHING STATIONERY and fuel used by the Legislature or other departments of the government, must be let to lowest bidder. Sec. 69, p. 52.

REVENUE BILLS.—Revenue bills must originate in House, but the Senate may propose amendment to bills. The Constitution of 1901 provides in addition that the Governor, Auditor and Attorney-general must prepare a revenue bill to be submitted to the Legislature, and further provides that no revenue bills shall be passed during the last five days of the session. These last two provisions were not in the Constitution of 1875. (The last provision will no doubt be the cause of many acts being declared unconstitutional.) Sec. 70, pp. 52, 53.

APPROPRIATION BILL.—The general appropriation bill shall embrace nothing but ordinary expenses of the government, in-

terest on public debt, and for public schools; other appropriations shall be made by separate bills which embrace but one subject. Constitution of 1901 further provides that the salary of any officer or employe shall not be increased in the appropriation bill, and that no appropriation shall be made therein for any employe unless his employment and the amount of his salary has been previously provided for by law. Sec. 71, p. 53.

NO MONEY SHALL BE PAID OUT OF THE TREASURY except upon appropriation made by law, and then only on warrant drawn in pursuance of law, and that all public money shall be published annually as provided by law. Sec. 72, p. 53.

NO APPROPRIATION shall be made TO CHARITABLE OR EDUCATIONAL INSTITUTIONS not under absolute control of the State except to Normal Schools established by law, except by a vote of two-thirds of all members elected to each House. Sec. 73, p. 53.

TRUST FUNDS.—Trust funds shall not be invested in bonds or stock of private corporations. Sec. 74, p. 53.

VENUE, CHANGE OF.—Courts have exclusive power to change venue of actions. Sec. 75, p. 54.

SPECIAL SESSIONS OF THE LEGISLATURE.—No legislation at special session upon any subject not designated in the Governor's proclamation calling such session, except by a two-thids vote of each House. Special sessions limited to thirty days. Sec. 76, p. 54.

INSPECTION OR MEASUREMENT OF COMMODITIES.—There shall be no State office for the inspection or measurement of commodities, but counties or municipalities may appoint such officer. Sec. 77, p. 54.

SEAT OF GOVERNMENT. — The Act changing the seat of Government must be approved by a majority of electors voting at the general election, and the Act shall specify the new location. Sec. 78, p. 54.

BRIBERY AS TO MEMBERS OF LEGISLATURE AND OTHERS attempting to bribe them.—The Constitution prescribed very strict and stringent regulations and definitions as to the bribery of members of the Legislature or other persons attempting to bribe them, and inflicts heavy fines. The Constitution of 1901 provides in addition that the Legislature shall provide for the trials and punishment of such offenses, and requires judges of the State to give the matter specially in charge to grand juries. Secs. 79-81, pp. 54, 55.

LEGISLATOR INTERESTED IN PENDING MEASURE.—A legislator interested in pending measure before the Legislature shall disclose his interest to the House of which he is a member. Sec. 82, p. 55.

ELECTIONS BY LEGISLATURE.—Elections by Legislature must be viva voce, vote entered on the journal. Sec. 83, p. 55.

ARBITRATION.—The Legislature is required to pass arbitration laws. Sec. 84, p. 56.

CODIFYING AND DIGESTING LAWS.—The Constitution of 1901 provides for laws to be codified and digested every 12 years; the Constitution of 1875 provided for it being done every 10 years. Sec. 85, p. 56.

DUELING.—The Legislature required to pass laws to suppress practice of dueling. Sec. 86, p. 56.

SALARIES OF OFFICERS REDUCED.—Salaries of public officers shall be reduced for neglect of duty which shall be provided for by the Legislature. Sec. 87, p. 56.

POOR, PAUPERS, MAINTENANCE OF.—The Legislature shall provide for the maintenance of the poor and paupers. Sec. 88, p. 56.

MUNICIPAL CORPORATIONS, POWERS OF.—Municipal corporations shall not be authorized to pass any law inconsistent with the general laws of the State. Sec. 89, pp. 56, 57.

ANNEXATION OF TERRITORY TO STATE.—Legislature shall provide laws for annexed territory; the Legislature and Governor may expend money and issue bonds to pay for territory acquired. Sec. 90, p. 58.

TAXATION, PROPERTY EXEMPT FROM.—PROPERTY of State, County, municipal corporations, cemeteries and certain property devoted to religious worship or school or other charitable purposes EXEMPT FROM TAXATION. The property devoted to charitable purpose is limited to one acre if within one mile

of city, town, etc., and to five acres if more than one mile distant from such city, town, etc. The Constitution of 1875 exempts property to the extent of $25,000 if used exclusively for agricultural or horticultural purposes. This last provision is omitted from the Constitution of 1901. Sec. 91, p. 58.

PROPERTY EXEMPT FROM SALE.—The Legislature shall provide amount of property exempt and mode of claiming and selecting the same. Sec. 92, p. 58.

INTERNAL IMPROVEMENTS, STATE SHALL NOT ENGAGE IN.—The State shall not engage in any internal improvement or lend its credit, and no subdivision of the State, county, or municipality shall lend its credit or grant public money or give aid to any individual, association or corporation or become stockholders in such. Secs. 93, 94, pp. 58, 59.

CONTRACTS, OBLIGATION CANNOT BE IMPAIRED.—Obligations of contracts cannot be impaired by destroying or impairing the remedy for their enforcement nor reviving any remedy which has become barred. The Constitution of 1901 contains a provision that if suit is commenced the Legislature shall not take away the cause of action or destroy existing defenses. This was not contained in Constitution of 1875. Sec. 95, pp. 59, 60.

COSTS AND FEES OF COURT.—Costs and fees of courts shall be uniform throughout the State; this was not provided in Constitution of 1875; under that Constitution various counties had different fees. Sec. 96, p. 60.

SALARY OF DECEASED OFFICER.—Salaries of deceased officers cannot be paid to any person. Sec. 97, p. 60.

OFFICER NOT RETIRED ON PAY.—Under the Constitution of 1901 no officer can be retired on pay. Sec. 98, p. 60.

STATE LANDS CANNOT BE DONATED.—State lands cannot be donated or sold for less price to corporations than to individuals, with the exception that the right of way may be donated to railroads. Sec. 99, pp. 60, 61.

OBLIGATION, LIABILITY OR DEBT DUE STATE.—The Constitution of 1901 provides that no obligation, liability or debt due the State, County or other municipality shall ever be remitted or released except by payment, nor shall it be transferred except for face value. Sec. 100, p. 61.

LOBBYING BY STATE AND COUNTY OFFICER PROHIBITED.—The Constitution of 1901 provides that no State or County officer shall lobby for or against any measure pending before the Legislature. Sec. 101, p. 61.

MARRIAGES OF WHITES AND NEGROES INTER SESE PROHIBITED.—The Constitution of 1901 prohibits the legalizing of marriage between whites and negroes. Sec. 102, p. 61.

MONOPOLIES, TRUSTS, COMBINATIONS PROHIBITED.—The Constitution of 1901 requires that the Legislature shall provide for and restrain common carriers, trusts, monopolies and combinations of capital, when they prevent competition. Sec. 103, p. 61.

(None of the matters provided for in the last eight sections above referred to were provided for in the Constitution of 1875.)

## LOCAL, SPECIAL AND PRIVATE LAWS PROHIBITED AND REGULATED.

There is possibly no provision or provisions of the Constitution of 1901 which will prove more beneficial to the State or do more to secure uniformity and certainty in the Laws of the State than the provision regulating special, local and private laws. There is at present no uniformity and little certainty as to the laws regulating municipal or private corporations. There is no way of ascertaining the charter powers, the rights or duties of municipal or private corporations except by an examination of the specific or individual charter of the corporation in question, which is usually granted by a separate act of the Legislature, and which was possibly amended at other succeeding sessions of the Legislature; the laws regulating the fees and compensation of officers, are now well-nigh innumerable; nearly every officer in the State has had special, private and local laws passed by the Legislature to regulate his fees and

compensation; if each individual officer has not done so, the counties or municipalities have provided separate laws for their respective jurisdiction. During the history of this State, local or special or private laws have been enacted upon most all subjects; there have been but few limitations upon the power of the Legislature to enact these laws, and there has been an insatiate desire on the part of legislators to exercise the right and power of passage, which has lead to a confusion and uncertainty which should not be permitted in any form of government. Sec. 104 of Constitution of 1901 specifies and enumerates thirty-one subjects upon which no special, private or local law shall be enacted. (q. v., p. 62 et seq.) It also requires the Legislature to pass general laws for those thirty-one cases enumerated, and exempts the liquor traffic from the operation of the provision as to local laws, and requires notice of all local, special or private laws to be given, and that affidavit of the fact shall be exhibited to each House, and that it shall be spread upon the journals, and that the journals must affirmatively show the fact. Secs. 104, 105, pp. 62-65.

Sec. 105 of the Constitution of 1901 makes the COURTS THE JUDGE as to whether the matter of the law can be provided for by a general law, and prevents the enactment of local laws by repeal or modification of general laws. pp. 64, 65.

## NOTICE OF LOCAL BILLS.

Sec. 106 of the Constitution of 1901 provides that no local law shall be passed except as to fixing time of holding court unless notice of the intention shall be published as therein required, and that the notice shall state the substance of the proposed law, and that proof of the notice shall be made by affidavit, which shall be exhibited to each House and spread upon the Journals; and declares that the court shall pronounce every local law void unless the Journals affirmatively show that it was passed in accordance with the provisions of this section. This provision is much more exacting in its details than the corresponding provision in the Constitution of 1875. It will no doubt be the cause of many bills being declared unconstitutional because of failure to comply with its provisions in some detail. The Supreme Court has already declared one bill unconstitutional because of insufficiency of the notice. This was the bill consolidating the courts of Jefferson County. See opinion in case of Wallace v. Jefferson Co., MSS. From this opinion it would seem the only safe course would be to publish the bill in full, though the court says in that opinion that this is not necessary; but as the constitutional provision requires the notice to state "The Substance of the Bill," it will be difficult to know what the court would consider sufficient so as to state the substance of any bill, therefore the safe course would be to let the notice contain the proposed bill in full. p. 65.

Sec. 107 provides that local laws shall not be repealed or modified except by giving notice as required in Sec. 106. p. 65.

Sec. 108 provides that general laws shall not be suspended for the benefit of individuals or corporations, and that no person or corporation shall be exempt from this provision. p. 65.

Sec. 109 provides that general laws shall be provided to protect private interests. p. 65.

Sec. 110 DEFINES GENERAL AND LOCAL, special and private laws, while Sec. 111 prohibits the amendment of a bill on its passage so as to become private or local. pp. 65, 66. (This constitutional provision as to private, local and special laws is well worth the costs of the new Constitution.)

## EXECUTIVE DEPARTMENT.

The changes made by the Constitution of 1901 as to the Executive Department of the Government are as follows:

COMMISSIONER OF AGRICULTURE AND INDUSTRIES IS CREATED, the office of Lieutenant Governor is created; the terms of the officers of the Executive Department are changed from two to four years. Secs. 112-114, p. 66.

The Constitution of 1901, after providing for the RETURNS OF ELECTIONS as to executive officers substantially as was in the Constitution of 1875, provided additionally that the duties of the Speaker of

the House shall be purely ministerial as to counting vote and declaring returns, and shall declare the results from the votes of the return without delay. Sec. 115, pp. 66, 67.

The Constitution of 1901 provides that after the first election under this Constitution NO EXECUTIVE OFFICER shall be ELIGIBLE AS HIS OWN SUCCESSOR, and that the Governor shall not be eligible to election or appointment to any State office or United States Senator, during his term, nor within one year after the expiration thereof. This provision was not contained in the Constitution of 1875. Sec. 116, p. 67.

ELIGIBILITY OF EXECUTIVE OFFICERS.—Eligibility of executive officers remains the same. Constitution of 1901 provides that the Lieutenant Governor shall be ex-officio President of the Senate, but shall have no right to vote except in case of a tie. Sec. 117, pp. 67, 68.

LIEUTENANT-GOVERNOR, COMPENSATION OF.—The Constitution of 1901 fixes the compensation of Lieutenant-Governor the same as that allowed Speaker of the House, except while serving as Governor, then the same as the Governor is allowed. Sec. 118, p. 68.

EXECUTIVE OFFICERS, residence of.—The executive officers, except Lieutenant-Governor, must reside at the Capital during the terms of their office, except in cases of epidemic. Sec. 118, p. 68.

GOVERNOR, SALARY OF.—The Constitution of 1901 requires that the salary of the Governor shall be increased by the next Legislature after the ratification of the Constitution. Sec. 119, p. 68. (Fixed at $5,000 per annum, see Acts 1903, p. 32).

GOVERNOR, DUTIES OF.—The Governor shall see to the execution of the laws, require information in writing under oath from other executive officers upon subjects relating to their offices; may convene the Legislature on extraordinary occasion, and shall specifically set forth in his proclamation the action as to which legislation is deemed necessary; shall from time to time give information to the Legislature and recommend measures for its consideration, and give written messages to Legislature at the commencement and close of his term of office as to the condition of State, and account to the State for all moneys received and paid out by him; he shall remit fines and forfeitures, and may grant or refuse commutation, parole or pardon and communicate to the Legislature his action in such matters with reasons therefor. Secs. 120-124, inclusive, pp. 68-70.

The Constitution of 1901 make the FAILURE TO MAKE REPORT OR making FALSE REPORT by executive officer to the Governor under Sec. 121 of the Constitution an impeachable offense. p. 68.

Sec. 124 creates a BOARD OF PARDON to consist of the Attorney-General, Secretary of State and Auditor, which board gives the Governor its opinion or advice as to the granting of paroles or pardons. Sec. 124, p. 69. (These last two provisions were not in the Constitution of 1875.)

THE GOVERNOR MUST SIGN OR VETO ALL BILLS PASSED BY THE LEGISLATURE.—If the Governor vetoes a bill he must return it to the House in which it originated, which House reconsiders it and enters the Governor's objection upon the journal, and if a majority of the whole number elected to the House vote for the passage, the bill is sent to the other house and if it receives a like vote in that House, it becomes a law, notwithstanding the Governor's veto. The Constitution of 1901 provides that the GOVERNOR MAY PROPOSE AMENDMENTS INSTEAD OF SIGNING OR VETOING. The House in which the bill originated may then amend the bill, in which case the bill with the Governor's message is sent to the other House, which may adopt it, but cannot amend such amendment. If both Houses concur in the amendment, the bill is then sent to the Governor and acted on as other bills. In case the House in which the bill originated refuses to make the Governor's amendment, it then proceeds to reconsider it as if it had been returned with the Governor's veto, and if passed by a majority of the whole house, it is then sent to the other House, and if passed by a majority of that House, it becomes a law. If the House in which the bill originated makes the amendment recommended by the Governor, and the other House declines to pass it, the latter House then

proceeds to reconsider it as if the bill originated in that House; in either case the vote must be taken by yea and nay, and the names entered upon the journal of both Houses. If any Bill is not returned by the Governor, Sundays excepted, within six days after it is presented, it becomes a law as if he had signed it, unless the Legislature adjourns within the six days; if return is prevented by a recess, the BILL MUST BE RETURNED within three days after reassembling, OTHERWISE IT BECOMES A LAW. Bills presented within five days before adjournment may be approved by tne Governor within ten days after adjournment, and deposited with the Secretary of State, and may become a law. Every vote, order or RESOLUTION which requires a concurrence of both Houses, except questions of adjournment, and bringing on elections and amending of Constitutions shall be presented to and APPROVED BY THE GOVERNOR, and if disapproved, shall be repassed by both Houses. Sec. 125, pp. 70-72. (These last provisions were not contained in Constitution of 1875.)

The Governor may approve or disapprove any items in appropriation bills. Sec. 126, p. 72.

VACANCIES AND SUCCESSION IN OFFICE OF GOVERNOR.—The Constitution of 1901 changes the succession to the office of Governor and the mode of filling vacancies. Successions to the office are the Lieutenant-Governor, President pro tem of the Senate, Speaker of the House, Attorney-General, Auditor, Sectreary of State, and Treasurer in the order named. Sec. 127 contains specific directions as to the mode of filling vacancies in the office of Governor and of supplying the place in cases of temporary absence. Sec. 127, pp. 72, 73.

Sec. 128 of the Constitution of 1901 provides for the administering of the office of GOVERNOR when the Governor or other officer administering it appears to be OF UNSOUND MIND, and prescribes the mode of adjudging when such person is of unsound mind, and when restored to his mind. pp. 73, 74.

Persons administering the office of Governor shall receive the same compensation as that prescribed for the Governor. Sec. 129, p. 74.

THE GOVERNOR CANNOT HOLD ANY OTHER OFFICE, civil or military, except those provided in Constitution. Sec. 130, p. 74.

THE GOVERNOR IS COMMANDER-IN-CHIEF of the militia and volunteer forces of the State, and may call out the same to execute the laws and repel invasion. Sec. 131, pp. 74, 75.

EXECUTIVE OFFICERS, ELIGIBILITY OF.—Executive officers must have been residents of the United States seven years, and of the State five years next preceding their election. Sec. 132, p. 75.

SEAL OF THE STATE.—The Seal of the State shall be used officially by the Governor, and shall be called "The Great Seal of the State of Alabama." The Secretary of State shall be custodian of the Great Seal. Secs. 133, 134, p. 75.

SECRETARY OF STATE, DUTIES OF.—He shall be custodian of the Great Seal; shall keep a register of the official acts of the Governor, and shall attest them, lay copies of them before the Legislature; grants and commissions shall be countersigned by him. Secs. 134, 135, p. 75.

EXECUTIVE OFFICES, VACANCIES.—The Governor shall fill vacancies in office of all executive officers of the State. Sec. 136, pp. 75, 76.

EXECUTIVE OFFICERS shall every year at the time fixed by the Legislature MAKE REPORTS to the Governor showing receipts and disbursements of their offices, taxes and revenues collected and sources thereof, and shall make reports thereunder if required by the Governor, and shall receive no compensation except the sums prescribed by law. Sec. 137, p. 76.

SHERIFF.—A Sheriff shall be elected for each county, shall hold office for four years. The Constitution of 1901 extends the office of the Sheriff until the year 1907, and further provides that if a prisoner shall be taken from the custody of the Sheriff and suffer death or great bodily harm, on account of neglect or cowardice, the Sheriff should be impeached, should not be eligible to other office during his term. Sec. 138, pp. 76, 77.

## JUDICIAL DEPARTMENT.

Judicial power of State is VESTED IN THE SENATE, AS A COURT OF IMPEACHMENT, A SUPREME COURT, CIRCUIT COURTS, CHANCERY COURTS, COURTS OF PROBATE, AND SUCH COURTS OF LAW AND EQUITY inferior to the Supreme Court as the Legislature may establish, and such persons as may be by law invested with power of a judicial nature. The Constitution of 1901 provides that no court of law and equity shall be established for any one county having a population of less than 20,000 and property taxed at less than three and one-half million dollars. This last provision is not in the Constitution of 1875. Sec. 139, pp. 77-79.

SUPREME COURT.—The Supreme Court is given appellate jurisdiction and power to issue writs of injunction, habeas corpus, etc., so as to give it superintendence and control of inferior courts. Sec. 140, pp. 79, 80.

Supreme Court shall be HELD AT SEAT OF GOVERNMENT unless it shall become dangerous, then may convene at another place. Sec. 141, p. 80.

CIRCUIT COURT.—State shall be divided into circuits, and one judge shall be chosen for each circuit. The Constitution of 1875 limited the number to eight, unless increased by vote of two-thirds of the Legislature, and that no circuit should contain less than three nor more than thirteen counties. This provision is omitted from the Constitution of 1901. Sec. 142, p. 80.

CIRCUIT COURT, jurisdiction of.—The Circuit Courts are given jurisdiction the same as in Constitution of 1875, with the exception that the Constitution of 1901 gives it original jurisdiction of suits for libel, slander, assault and battery and ejectment where the controversy is more than $50. Sec. 143, p. 80.

CIRCUIT COURTS, TIME AND PLACE OF HOLDING.—Circuit Courts shall be held at least twice a year in each county; judges may hold court for each other, and may issue injunction returnable to courts of chancery or to other courts having jurisdiction of chancery. Sec. 144, p. 81.

CHANCERY COURTS, JURISDICTION OF. —The Legislature may establish courts of chancery with original or appellate jurisdiction, and the State shall be divided by the Legislature into divisions, and each division into districts; there shall be one Chancellor for each division. The Constitution of 1901 excepts from the jurisdiction of Chancery Courts cases otherwise authorized in the Constitution, and fixes no limit upon the number of divisions, while the Constitution of 1875 limited the number of divisions to three, unless increased by a two-thirds vote of each House. Sec. 145, p. 81.

CHANCERY COURTS, TIME AND PLACE OF HOLDING.—The Constitution of 1901 requires Chancery Courts to be held twice a year, while the Constitution of 1875 required it to be held but once. Sec. 146, p. 81.

COUNTIES HAVING POPULATION OF 20,000, and property assessed at three and one-half million dollars or more, may constitute a circuit or chancery division, and provides that no circuit or division shall contain less than three counties unless it embraces one county containing 20,000 inhabitants, or having a tax valuation of three and one-half million dollars. Sec. 147, pp. 81, 82.

COURTS, CONSOLIDATION OF.—The Legislature may consolidate Circuit and Chancery Courts, and may consolidate the several courts of record in counties having two or more, except Courts of Probate, and may provide a sufficient number of judges. Sec. 148, p. 82. (This provision was not contained in the Constitution of 1875.)

PROBATE COURTS. — The Legislature may establish a Court of Probate in each county with jurisdiction of orphan's business, granting letters testamentary and of administration. The Constitution of 1901 further provides that when courts having equity jurisdiction have taken jurisdiction of the settlement of the estate, it shall have power to conclude the settlement the same as Probate Courts. This last provision was not in the Constitution of 1875. Sec. 149, pp. 82, 83.

JUDGES, COMPENSATION OF.—Judges, except Probate Judges, shall receive such compensation as shall be provided by law, which shall not be diminished during their

term, and they shall hold no office except judicial. Sec. 150, p. 83.

Judges of Supreme Court shall consist of a Chief Justice and any number of associates as may be provided by law. Sec. 151, p. 83.

JUDGES, ELECTION OF.—The judges shall be elected by the qualified electors of the State at such times as may be provided by law, except judges of inferior courts, who may be elected or appointed. Secs. 152, 153, pp. 83, 84.

JUDGES, ELIGIBILITY OF.—Judges of courts of record shall be twenty-five years of age, and residents of the United States and of the State for five years, and with the exception of Probate Judges shall be learned in the law. Sec. 154, p. 84.

JUDGES, TERMS OF OFFICE.—Judges shall hold office for the term of six years, and until their successors are elected or appointed and qualified; this shall not be affected by any law hereafter made in any circuit or county. Sec. 155, p. 84.

JUDGES OF SUPREME COURT, time of Election.—The Constitution of 1901 provides that the Chief Justice elected in 1904 shall hold for six years, and contains a provision that two of the associate justices shall be elected every two years thereafter. Sec. 156, pp. 84, 85.

JUDGES ARE CONSERVATORS OF THE PEACE. Sec. 157, p. 85.

VACANCIES IN OFFICE.—Vacancies in the office of judges shall be filled by appointment of the Governor. The Constitution of 1901 provides that the appointee shall hold office until the next general election for State officers held at least six months after the vacancy occurs, and until his successor is elected and qualified, and that the successor chosen at such election shall hold office for the unexpired term, and until his successor is elected and qualified. (This last provision was not in the Constitution of 1875.) Sec. 158, p. 85.

JUDGES FOR NEW CIRCUIT OR CHANCERY DIVISIONS.—The Constitution of 1901 provided that the judges for new circuits or new chancery divisions should be appointed by the Governor, and if created six months before a general election the Governor shall appoint a judge to hold office until the election, at which time a successor shall be elected. Sec. 159, pp. 85, 86.

JUDGES, INCOMPETENT DISQUALIFIED; SPECIAL, HOW SELECTED.—If a judge or chancellor is disqualified or incompetent to try a given case, the attorneys of record may agree upon some one as special judge or chancellor to try such case, some disinterested person practicing in the Court, and who is learned in the law, as a special judge. If the attorneys cannot agree, the clerk or register in chancery shall appoint a special judge or chancellor. Sec. 160, pp. 86, 87.

JUDGES FAILING TO ATTEND COURT.—The Legislature shall provide for holding courts when the judges or chancellors fail to attend regular terms. Sec. 161, p. 87.

Judges of Courts of Record shall not practice law in this State or Federal Courts. Sec. 162, p. 87.

REGISTER IN CHANCERY.—Registers in chancery shall be appointed by the Chancellor, and shall hold office during the term of the Chancellor making the appointment. The Constitution of 1901 provides that he shall be a resident of the district, and that the fees or compensation of registers shall be uniform throughout the State. (These last two provisions were not included in the Constitution of 1875.) Sec. 163, p. 87.

CLERKS OF COURT.—Clerks of the Supreme Court shall be appointed by the judges thereof, and hold office for six years. Sec. 164, p. 87.

CLERKS OF INFERIOR COURTS shall be selected as the Legislature may provide. Under the Constitution of 1875 they were appointed by the judges of such inferior Courts. Sec. 164, p. 87.

CLERKS OF CIRCUIT COURTS shall be elected by the qualified electors to hold office for six years. Vacancies are filled by the judge for unexpired terms. Sec. 165, pp. 87, 88.

CLERKS OF THE SUPREME COURT AND REGISTERS in Chancery may be removed from office by judges or chancellors respectively. Sec. 166, p. 88.

SOLICITORS.—A solicitor for each judicial circuit or other territorial subdivisions shall be elected by the qualified electors of those counties, circuits or divisions who shall be learned in the law, reside in

the county or circuit for which he is elected, shall hold office for four years; shall receive no compensation except salary to be prescribed by law which shall not be increased during the term for which he is elected. Constitution of 1901 contains a proviso that it shall not abridge the term of any solicitor then holding office, and provides further that the Legislature may provide for the appointment or election of a county Solicitor. Under the Constitution of 1875 circuit solicitors were elected by the Legislature. Sec. 167, p. 88.

JUSTICE OF THE PEACE.—Two justices of the peace shall be elected for each precinct. The Constitution of 1901 provides that for each precinct within a city or town of more than 1,500 inhabitants, that the Legislature may provide for the election of two justices and a constable or an inferior court for each precinct so situated in lieu of all justices of the peace therein, and that the fees of justice of the peace and constables shall be uniform throughout the State. Sec. 168, pp. 88-90.

NOTARIES PUBLIC; EX-OFFICIO JUSTICES.—The Governor may appoint a notary public with the powers of a justice of the peace in the precinct in which the election of a justice of the peace shall be authorized. Sec. 168, pp. 88-90.

ATTORNEY-GENERAL.—The election of an Attorney-General as provided by Sec. 27, Art. 6 of Constitution of 1875 is omitted from the Constitution of 1901. p. 90.

COURT ROOMS, EXCLUDING PERSONS FROM.—The Constitution of 1901 authorizes the court to exclude persons from the court room not necessary in the conduct of the trial in prosecutions for rape and assault with intent to ravish. Sec. 169, p. 90.

STYLE OF PROCESS shall be "The State of Alabama," and shall conclude, "Against the peace and dignity of the State." Sec. 170, p. 90.

COURTS, ABOLITION OF.—The Legislature may abolish any courts except the Supreme Court and Probate Court. (This provision was not contained in Constitution of 1875.) Sec. 171, p. 90.

The Constitution of 1901 provides that the article on Judiciary shall not abridge the term of any officer then in office. Sec. 172, p. 90.

## IMPEACHMENTS.

Sec. 173 of the Constitution of 1901 provides for the IMPEACHMENT OF EXECUTIVE OFFICERS AND JUSTICES OF THE SUPREME COURT by the Senate sitting as a Court of Impeachment on articles preferred by the House of Representatives, and enumerates the grounds for impeachments and provides that when the Governor or Lieutenant-Governor is impeached, the Chief Justice, or in his absence, an associate justice, shall preside over the Senate during the impeachment, and directs specifically the mode of impeachment for the several officers mentioned. Sec. 173, pp. 90-92.

CHANCELLORS, JUDGES OF CIRCUIT COURTS, JUDGES OF PROBATE COURTS AND JUDGES OF OTHER COURTS from which an appeal can be taken to the Supreme Court, solicitors and Sheriff may be impeached by the Supreme Court under regulations to be prescribed by law. Sec. 174, p. 92.

CLERKS OF THE CIRCUIT COURT, OF COURTS OF LIKE JURISDICTION, Criminal Courts, Tax Collectors, Tax Assessors, County Treasurers, County Superintendents of Education, Mayors and intendants may be impeached by proceedings in the Circuit Court or other court of like jurisdiction in which such officers hold office under regulations to be prescribed by law. Sec. 175, pp. 92, 93.

PENALTIES.—Sec. 176, p. 93, provides penalties for impeachments.

## SUFFRAGE AND ELECTIONS.

There has been a greater and more radical change in this article of the State Constitution than in any other. There is no doubt but that an amendment of this article called forth the new Constitution. Fraudulent elections in the State, or in portions thereof, at least, had been, or at least by the public was thought to have become one of the greatest moral and political evils ever inflicted upon the people of the State. It was begun during reconstruction by the Republicans, carpetbaggers and scalawags, and after they

were overthrown, in 1874, it was kept up in portions of the State by the Democrats, though appearing and existing in different forms from those of the Republicans, by fictitious or altered returns; this, while existing in many portions of the State, to some small extent, was confined chiefly to the "Black Belt," that part of the State where the negroes greatly dominate. This was recognized by many of the best citizens as being a necessary evil in order to secure peace and order, and to keep the government in the hands of the virtuous and intelligent. It was, therefore, the acknowledged purpose of the Constitutional Convention to rid the State of this evil by placing the government in the hands of the virtuous and intelligent rather than in the hands of the ignorant, vicious, and depraved; and to secure as far as practicable absolutely fair and honest elections, so that it would not be necessary to resort to fraud, or to countenance or palliate it, in order to secure the necessary end; hence, the task imposed upon the Convention as to this article of the Constitution was to place the ballot in the hands of the virtuous and intelligent, and to take it from the ignorant and depraved. The Convention was faced with this condition. It is a well known fact that the greater part of the ignorant and vicious voters of the State were negroes, and that they could not be eliminated merely because they were negroes, or upon any other ground than that which would eliminate whites of the same character and condition, without violating the 15th Amendment to the Federal Constitution. It is also a well known fact that if a purely educational qualification was imposed, that it would exclude many of the very best citizens of the State, for many of the very best citizens, and men of a very high order of intelligence, and of the highest sense of moral and religious principles have little or no education, in the popular sense, in which that term is used; that is, ability to read and write. For the same reason a strict property qualification could not be imposed without depriving many worthy and intelligent citizens of the right to vote, because accident, misfortune or fate had rendered them unable to acquire property. It was, therefore, not an easy task to fix provisions in the Constitution which would eliminate the ignorant and vicious, those in whose hands the government should not be placed, and yet allow every intelligent and virtuous man the privilege of exercising the right to vote. There is no doubt but that the present provision of the Constitution has eliminated a large percentage of this ignorant and vicious class who should never have a right to vote in any country, who are incompetent to enact laws to govern themselves, much less an intelligent and virtuous people. This much is now an accomplished fact; whether this provision of the Constitution which accomplishes this purpose is in violation of the Federal Constitution yet remains to be decided, as it has never been passed upon by any Court, State or Federal. It is the opinion of the writer, after a long, careful and diligent study of this Constitution and the decisions of the Courts construing other similar provisions, that it does not violate any provisions of the Federal Constitution; and, if not, it is clearly valid. No citizen, white or black, in this State, or any other State of the Union, has not now, and never has had, a natural or inalienable right to vote; voting is not one of the citizen's natural rights; it is not one of the rights reserved to him by the fundamental law of the State or Union; it is a privilege conferred upon him by the Sovereignity or State. The State has the exclusive power of saying who shall vote and who shall not vote, and a man who is denied the privilege has no legal right to complain because it is conferred upon another. The only limitation upon the State's right is, that he shall not be excluded or denied this privilege "BECAUSE OF RACE, COLOR OR PREVIOUS CONDITION OF SERVITUDE." It is feared by some of the friends of the Constitution, and hoped by its enemies, that what is known as the "Grandfather's clause" of the Constitution (1st and 2d subdivisions of Sec. 180, Constitution of 1901) violates this provision of the Federal Constitution. But in the opinion of the writer it is clear that this provision does not violate the Federal Constitution. It does not deny or exclude any person, white or black, from exercising the right of franchise, but confers a

privilege upon a certain class of people of exercising the right, and without regard to race, color or previous condition of servitude. It is true that the larger number and percentage of persons included in this class are whites, but this condition does not make the law void, because that same condition would exist as to any other qualification that could or probably would be fixed by any State in the Union; *e. g.*, if it should include those who can read and write the English language, or those who owned property, it would include more whites than negroes, for the reason that a greater percentage of whites can read and write and own property, and there are more of the whites; another reason why it does not discriminate against the negro is because there are many negroes who can and have actually voted by means of this provision who could not vote but for it. It is certainly true that if this provision allows negroes to vote, who could not vote but for it, it cannot be a discrimination against them.

Under the Constitution of 1875 every male citizen of the United States, or male person who had declared his intention to become a citizen, and who was twenty-one years of age, could vote, provided he had resided in the State one year, the county three months, and in the precinct thirty days preceding the time of voting, and had not been convicted of treason, malfeasance in office, larceny, bribery or other felony, and provided he was not an idiot or an insane person. The Constitution of 1901 excludes all of those persons who were excluded under the Constitution of 1875, and in addition all persons who had been convicted of a number of misdemeanors, including petit larceny, false pretense, wife beating, election frauds, adultery, or other crime involving moral turpitude (Q. V., Sec. 182, p. 96), and it changes the residence to two years in the State, one in the county and in the precinct three months (Sec. 178, p. 94). Hence persons who have not resided in the State this length of time, or have been convicted of any of the crimes mentioned, and have not paid poll taxes, cannot vote at all, no matter what other qualifications they may have. Another additional requisite to vote under the Constitution of 1901 is that the person shall have registered as a voter under the provisions of the Constitution. The Constitution of 1901 fixes two periods in which the qualifications or requisite to vote are different in each—that is, from the ratification of the Constitution to the first day of January, 1903, the qualifications and requisite to vote are different from those necessary after that date—that is to say, the "Grandfather clause," and the good character clause (Q. V., Sec. 180, p. 94), are not operative, and are not extended beyond the first day of January, 1903; the effect of which is that if persons included within those provisions which are those who had honorably served in the wars mentioned, or were the descendants of persons who had so served as soldiers in the wars or forces mentioned, or persons of good character who understand the obligations of citizenship under American form of government, registered on or before such date, became voters for life; but unless they so registered before the first day of January, 1903, these provisions of the Constitution were not availing, though they fell within that class. After this date, the Constitution fixes both an EDUCATIONAL AND A PROPERTY QUALIFICATION upon the right to vote; the educational qualification is, that the person must be able to read or write any article of the Constitution of the United States in the English language, and in order for this qualification alone to give the person the right to vote, he must have been engaged at some lawful employment, trade or business for the greater part of twelve months preceding the time he offers to register, or he must be physically unable to work. This educational qualification is not required, if the inability to read or write is due solely to a physical disability.

THE PROPERTY QUALIFICATION IS, that the man must in his own right, or in the right of his wife, in good faith, own forty acres of land in the State upon which he and his wife reside; or he or his wife must in good faith own three hundred dollars worth of taxable property, real or personal, upon which taxes are assessed and paid. It is not necessary that a person shall possess both the educational and property qualifications if he possesses

either, and is not excluded because he has been convicted of the crimes mentioned in the Constitution, and is a citizen twenty-one years of age, and has resided in the State two years, the county one year, and the precinct three months, and has paid all poll taxes, he is entitled to register and to vote. Sec. 180, pp. 94, 95.

QUALIFICATIONS AND ELIGIBILITY TO VOTE.—First, person must be man over twenty-one years of age; second, must be citizen or have declared his intention to become citizen of the State and United States; third, must have paid all poll taxes for which he was liable since and including the year 1901; fourth, must have resided in the State two years, the county one year, and the precinct three months before voting; fifth, must not be idiot, lunatic, or insane; sixth, must not have been convicted of a felony or any crime involving moral turpitude or election frauds, or of any of the misdemeanors mentioned in Sec. 182 of Constitution; seventh, must have registered as required by law; eighth, must be able to read and write any article in the Federal Constitution, and have worked or been engaged in some honorable occupation for twelve months, or be physically disabled from working, or be physically unable to read or write solely because of physical disability, or own forty acres of land in own right or in right of wife upon which he resides, or own three hundred dollars' worth of taxable property upon which the taxes have been assessed and paid, or must be registered under the Constitution prior to the first day of January, 1903. It will be noticed that those persons now exempt from the educational and property qualification are those who cannot read or write solely because of physical disability, and those who were registered prior to the first day of January, 1903.

REGISTRATION.—Registration is required of all voters, and in order to register, the person must have all the other qualifications to vote; the Constitution creates and prescribes certain proceedings and regulations and rules minutely and in detail for registration (see Secs. 186-188, pp. 98-103), but it is not necessary to notice these in detail, because they are not now in force; the Constitution providing that they were effective only until the first day of January, 1903, when the Legislature is required to pass an Election Law to regulate subsequent registration, this has been done, see Acts 1903, p. 438.

WHAT ELECTIONS CONTROLLED BY CONSTITUTION.—All State, county, and municipal, whether general, local, or special, and all Primary Elections, party conventions and mass meetings. Secs. 183, 184, p. 97.

CHALLENGING VOTES.—If an elector's right to vote be challenged, for any legal cause, he must make oath that the matter of challenge is untrue before his vote shall be received. Sec. 185, p. 97.

OATH REQUIRED OF APPLICANT TO REGISTER.—After the first day of January, 1903, an applicant to register may be required to make oath as to his residence during five years preceding the time he applies to register, the names by which he was known during that time and of his employers, and if he fails to make answer, or answers falsely, shall be guilty of crime. Sec. 188, p. 103.

CONTESTED ELECTIONS. — In contest elections no witness except the defendant shall be allowed to withhold testimony on the ground it might criminate him, but he is protected from prosecution which may arise from his testimony, but may be prosecuted for perjury. Sec. 189, p. 103.

ELECTION LAWS REQUIRED: Legislature. —The Legislature is required to enact election laws, not inconsistent with the Constitution, to be uniform throughout the State, and to regulate primary elections and to punish frauds at same, and to purge registration list. The Legislature has complied with this by Acts 1903, p. 438. Sec. 190, pp. 103, 104.

INTOXICATING LIQUORS shall not be sold on election days.—Sec. 191, p. 104, Acts 1903, p. 438.

ELECTORS PRIVILEGED FROM ARREST.—At or while going to or returning from election. Sec. 192, p. 104.

RETURNS OF ELECTIONS.—Returns of elections of members of the Legislature and all officers commissioned by the Governor except Attorney-General, Auditor, Secretary of State, Treasurer, Superintendent of Education and Commissioner of Agriculture and Industries shall be

made to the Secretary of State. Sec. 193. pp. 104, 105.

POLL TAX.—The poll tax shall be one dollar and fifty cents per annum of all men between the ages of twenty-one and forty-five unless exempt by law; the Legislature may increase the age limit to sixty years; it is due and payable the first of October, and delinquent the first of February succeeding. The collection of this tax shall not be compulsory, and no fees or commission allowed for the collection. (In the opinion of the writer this provision is a very unwise one.) Sec. 194, p. 105. It is made a crime for any person to pay the poll tax of another, or to advance him money with which to pay it in order to influence his vote. Sec. 195, p. 105.

Sec. 196 provides that if any section or subdivision of the article on Franchise and Elections be declared or held to be void, the residue of the article should not be affected thereby. The purpose of this is to afford the court a rule or means of construction for this article; it is tantamount to saying that the Convention would have enacted any one of the sections without regard to any other; it was a safeguard against the "grandfather clause" of the Constitution. p. 105.

## REPRESENTATION, AS TO SENATORS AND REPRESENTATIVES.

The constitutional provisions as to representation in the Legislature are practically the same in the new Constitution as in the old, the only difference being in numbers; the maximum number of Representatives now being 105, whereas before it was 100, and the maximum number of Senators being 35, instead of 33, as heretofore (Q. V., Sec. 50, p. 45), while the proportion is that the Senators shall be not less than one-fourth nor more than one-third the number of Representatives. The Representatives must be apportioned among the several counties according to the number of inhabitants respectively, but each county must have one Representative. The State must be divided into Senatorial districts, each district to contain as nearly as practicable the same number of inhabitants. No county shall be divided between two districts, and all counties in a district must be contiguous. A census must be taken for this purpose in 1910, and every ten years thereafter, which shall form a basis for the Representation thereafter; until 1910, the census of 1900 must form the basis. Sec. 197-203, pp. 105-108.

## EXEMPTIONS.

The constitutional provisions as to exemptions of property from levy and sale under legal process are practically the same in the new as in the old Constitution; these provisions exempt to any resident whether male or famale, married or unmarried, $1,000 worth of personal property to be selected by him or her and 80 acres of land if not in a city, town or village, and if in a city, town or village, real estate to the value of $2,000, provided such lands are used as a residence by the owner, which lands, whether in or out of city or village, to be selected by the owner from other lands, if he owns more. If a resident owns less personal property or less lands than is exempt, it would seem that a selection by the owner is not necessary, because impracticable; but the decisions of the Supreme Court are in conflict upon this question. The same amount of personal property and lands as a homestead is exempt to the widow and minor children of a deceased person as is exempt to him. The exemption only extends to debts of the owner and not to liability for torts. Nor are the exemptions good against a laborer's lien or for a mechanic's lien, and by construction it has been extended to any other prior lien. The property of a married woman is exempt from liability for the debts of her husband, and may be devised or bequeathed by her as if a feme sole. The exemption rights conferred by the Constitution may be waived, but the waiver must be in writing, and if as to land, it must be signed by both husband and wife, and attested by one witness. The Supreme Court has placed a strange construction upon that provision of the Constitution which says that "The homestead, not exceeding eighty acres," shall be exempt; holding that "not exceeding eighty acres" means not less than eighty acres, and that the

Legislature may extend it to any number of acres, and the Legislature has extended it to 160 acres. It is difficult for a lawyer to understand the logic or soundness of this decision, much less a layman; but it is now well settled, and has been since adopted by the Constitutional Convention after construction by the Court, hence it will be presumed that this construction will hold as to the new Constitution. Secs. 204-210, pp. 108-112.

## TAXATION.

The new Constitution makes a number of important and radical changes as to taxation, as will be seen by the following comparisons.

PROPORTION OF TAXATION.—All property tax shall be in proportion to the value of the property; this much is common to both Constitutions. The new Constitution provides that rent or hire during the current year shall not be liable to taxation if the property rented or hired is assessed at full value. Sec. 211, pp. 112-115.

DELEGATION OF POWER.—The power of taxation cannot be delegated to individuals or private corporations, but may be to public or municipal, such as counties, cities, towns, etc. This is common to both Constitutions. Sec. 212, p. 115.

DEBTS OF STATE.—Debts of State cannot be incurred except to repel invasion or to suppress insurrection and then only by a two-third vote, though the Governor may provide temporary loans to meet deficiencies in Treasury and may issue bonds for refunding bonded indebtedness. This is common to both Constitutions. Sec. 213, p. 115.

RATE OF TAXATION.—The maximum rate of State tax is now fixed at sixty-five one-hundredths of one per cent, while under the former Constitution it was seventy-five one-hundredths of one per cent. Sec. 214, pp. 115, 116.

The maximum rate of county tax is fixed at one-half of one per cent, except that for the purpose of paying debts existing an additional rate of one-fourth of one per cent may be levied, and that for the purpose of building or maintaining public buildings or bridges or roads a special tax of one-fourth of one per cent may be levied. This last special tax was unlimited in the Constitution of 1875, as to the rate, but was limited to public "buildings or bridges," and was not extended to "roads" as it now is, in the Constitution of 1901. Sec. 215, pp. 116, 117.

The rate for municipal corporations is limited to one-half of one per cent as assessed by the State for the previous year; this is common to both Constitutions. The city of Mobile is excepted from both provisions, its rate being fixed in the Constitution of 1875 at one per centum, and in that of 1901 at three-fourths of one per centum, with other provisions and exceptions. The cities of Huntsville, Bessemer, Andalusia, Montgomery, Troy, Attalla, Gadsden, Woodlawn, Brewton, Pratt City, Ensley, Wylam, Avondale, Decatur, New Decatur and Cullman, are exempt from the provisions with special conditions and provisions as to each of such cities or towns mentioned. Sec. 216, pp. 117-119.

UNIFORMITY OF TAXATION.—The property of individuals and corporations must be taxed at the same rate except the property of religious, educational, and charitable corporations. Sec. 217, p. 120.

SALARIES OF OFFICERS.—Sec. 8, of Art. 11, of the Constitution of 1875, provided that the salaries of State officers shall be reduced at least twenty-five per cent by the legislature at first session after ratification of Constitution. This was omitted from the new Constitution because its purpose had been accomplished; it was necessary in the Constitution of 1875 because the salaries had been fixed at enormous and exorbitant rates by the Republicans, carpet-baggers, and scalawags during reconstruction. The class of politicians who were in office for the sole purpose of sucking the life blood of the State rather than to promote its welfare or to preserve its peace and prosperity. pp. 120, 121.

DEBTS OF STATE; HOW PAYABLE.—All debts or charges now payable out of the State Treasury shall not be made payable out of the counties or municipal corporations. Sec. 218, p. 121.

INHERITANCE TAX.—This is a new provision of taxation as to this State. A tax of one-half of one per cent on all estates, no matter of what kind of property that passes by inheritance, devise, or bequest, gift, deed, grant, bargain or sale, if made to take effect after death of grantor, devisor, or donor to any person or corporation other than the father, mother, husband, wife, brothers, sisters or lineal descendants of the grantor, devisor, donor, or intestate. Sec. 219, p. 121.

## CORPORATIONS, MUNICIPAL.

This article of the Constitution of 1901 is entirely new, there being no corresponding provisions, except as to first section.

STREETS, AVENUES, PUBLIC PLACES.—The streets or public places of any city, town, or village shall not be used by individuals or private corporations for any public or private enterprise without the consent of the municipal corporation. Sec. 220, pp. 121, 122.

PRIVILEGE OR LICENSE TAXES.—The legislature shall not exempt persons or corporations from privilege or license taxes to counties or municipal corporations by the payment of such tax to the State in lieu of all other taxes. This provision was evidently intended to prevent a class of legislation which was being enacted, of levying a State tax upon certain corporations, and making it in lieu of all other privilege or license taxes, thus depriving the counties and municipalities of the legitimate right to tax. Sec. 221, p. 122.

MUNICIPAL BONDS.—The Legislature is charged with the duty of providing by general law for municipalities to issue bonds and to hold elections for such purpose. Sec. 222, p. 122.

ASSESSMENT OR BETTERMENT TAXES.—Municipal corporations may make assessments against abutting owners for the improvement of streets, sidewalks, sewers, etc., but the assessment shall not exceed the betterment or benefits derived from the improvement. Sec. 223, pp. 122, 123.

DEBTS OF COUNTY LIMITED.—No county shall become indebted in an amount greater than three and one-half per centum of the assessed value of the property therein, which contains some exceptions as to existing debts and issuing bonds as to funding or refunding the indebtedness. Sec. 224, p. 123.

DEBTS OF MUNICIPAL CORPORATIONS LIMITED.—Debts of municipal corporations of less than six thousand inhabitants are limited to five per centum of the assessed value of the property therein, except for the construction of waterworks, gas, or electric light plants, sewerage, or street improvements, etc., for which an additional amount of three per cent may be added. It contains some exceptions as to certain debts. Towns or cities of more than six thousand inhabitants are limited to seven per centum. This contains some exceptions, and excepts from its provisions the towns of Gadsden, Ensley, Decatur, New Decatur, Sheffield, and Tuscumbia. Sec. 225, pp. 123, 124.

CITIES OR TOWNS WHOSE INDEBTEDNESS EXCEEDS THE LIMITATIONS imposed shall not become further indebted until indebtedness is reduced within the limit with certain provisions and exceptions therein mentioned. Sec. 226, p. 124.

ABUTTING OWNERS.—Persons operating a public utility along or across public highways in municipal corporations are liable to abutting property owners for damages resulting therefrom. Sec. 227, p. 124.

FRANCHISE RIGHT TO STREETS LIMITED.—Towns of over six thousand inhabitants cannot grant franchise rights as to streets except for railroads other than street railroads for a longer period than thirty years. Sec. 228, pp. 124, 125.

## PRIVATE CORPORATIONS.

The Constitution of 1901 has wrought some very important changes in the law of corporations, which, in connection with the new statutes, Acts 1903, p. 310, creates almost a new system of corporation law. Under the new Constitution all corporations must be formed under general laws whereas before they were formed chiefly by special and private statutes. It requires the Legislature to levy a privilege or license tax upon corporations. Sec. 229, p. 125.

FORFEITURES, NONUSER.—Charters un-

der which no organization is had within twelve months after ratification of Constitution are forfeited. Sec. 230, p. 125.

THE LEGISLATURE SHALL NOT REMIT the forfeiture of charters, except such corporations thereafter hold their charters subject to the Constitution. Sec. 231, p. 126.

FOREIGN CORPORATIONS.—Foreign corporations cannot do business in this State without a known place of business and an authorized agent. And may be sued in any county where it does business by service of process upon an agent anywhere in the State. The State may impose a franchise tax based on the amount of capital employed in the State. The corporation must file with the Secretary of State a certified copy of the articles of incorporation. The last two provisions are not included in Constitution of 1875. Sec. 232, pp. 126, 127.

BUSINESS AND POWERS OF CORPORATIONS.—Corporations can do no business except that expressly authorized by its charter. Sec. 233, p. 127.

STOCK OR BONDS, WHAT PAYABLE IN AND INCREASE OF.—Stock or bonds of a corporation shall be payable in money, labor, or property actually received. Fictitious stock shall be void. Stock cannot be increased except with consent of persons owning largest amount of stock obtained at meeting after thirty days notice. Sec. 234, pp. 127, 128.

COMPENSATION FOR PROPERTY TAKEN UNDER EMINENT DOMAIN.—Compensation for property taken under right of eminent domain must be paid before the property is taken, and the right of appeal from assessment of damages secured, and shall be determined by a jury. Sec. 235, pp. 128, 129.

STOCKHOLDER, LIABILITY OF.—Stockholders are individually liable only to the extent of unpaid stock. Sec. 236, p. 129.

PREFERRED STOCK.—Preferred stock can be issued only with the consent of owners of two-thirds of the stock of the corporation. Sec. 237, p. 129.

CHARTERS, AMENDMENT OF.—The Legislature may alter, amend, or revoke the charter of any corporation, if revocable, at the ratification of this Constitution, or of any charter hereafter created. Sec. 238, p. 130.

TELEGRAPH AND TELEPHONE LINES.—Corporations may maintain or construct telephone or telegraph lines within the State and connect with each other, but different lines shall not consolidate nor hold a controlling interest in the stock or bonds of other companies which competes with them. Sec. 239, p. 130.

RIGHT TO SUE AND BE SUED.—Corporations may sue and be sued as individuals. Sec. 240, p. 130.

CORPORATION DEFINED. — Corporations include joint stock companies and associations having the powers of corporations not possessed by individuals or partnerships. Sec. 241, p. 130.

## RAILROADS AND CANALS, PUBLIC HIGHWAYS.

Railroads and canals are public highways. Railroads have the right to connect with and to cross other railroads, and each must transport freight and passengers of the other without delay or discrimination. Sec. 242, p. 131.

REGULATION OF RAILROADS.—The Legislature has power to regulate railroads as to tariff and rates of passengers and freight, locating depots, correcting abuses, preventing discrimination and extortion, and to prohibit charging more than just and reasonable rates. The power in this respect is somewhat extended by Constitution of 1901. Sec. 243, p. 131.

FREE PASSES PROHIBITED.—Railroads shall not grant free passes or sell tickets at reduced rates or discount to any legislator or judicial officer. This offense is made a misdemeanor, and courts are required to give it in special charge to grand juries. An exception to the provision is that a legislator who is a bona fide employee of a railroad may procure passes for himself or another who is not a legislator or judicial officer. Sec. 244, pp. 131, 132.

REBATES PROHIBITED. — Rebate or bonus is prohibited by the Constitution. Sec. 245, p. 132.

## BANKS AND BANKING.

Banks shall not be established except under the provisions of the Constitution. Sec. 247, p. 133.

BASIS OF ISSUE.—All banks must be upon a specie basis, and under general law, provided that banks depositing United States or State bonds convertible into specie at face value in the State Treasury or other depository equal to the proposed issue of bank notes, with power in Treasurer or depository to dispose of the same to redeem the notes or bills issued, may issue bills to circulate as money. Sec. 248, p. 133. The proviso is new to the Constitution of 1901.

BILLS REDEEMABLE IN GOLD OR SILVER.—Bank bills shall be redeemable in gold or silver. Sec. 249, p. 133.

DEPOSITORS, WHO PREFERRED.—Non-interest bearing deposits are entitled to preference in case of insolvency of bank. Sec. 250, p. 133.

BANKING OPERATIONS CEASE WITHIN TWENTY YEARS.—All banks shall cease operations within twenty years of organization unless time extended by law, but shall have power to sue and be sued thereafter to close up its affairs. Sec. 251, p. 133.

RATE OF INTEREST.—Banks shall not receive greater interest than allowed to individuals. Sec. 252, p. 134.

STATE OR SUB-DIVISION THEREOF CANNOT BE STOCKHOLDER.—The State, county, or municipality or any political subdivision of the State cannot be a stockholder in a State bank. Sec. 253, p. 134.

EXAMINATION OF BANKS.—The Legislature shall provide by law for a public examination of all banks at least twice a year. Sec. 254, p. 134.

NATIONAL BANKS NOT INCLUDED.—National banks, trust companies, and individuals doing a banking business are not included in the Constitutional provisions. The last two provisions are not in the Constitution of 1875. Sec. 255, p. 134.

## EDUCATION.

SCHOOL SYSTEM PROVIDED.—The Legislature shall provide a liberal school system for the benefit of children between the ages of seven and twenty-one, and separate schools shall be provided for the white and colored children, and no children of the one race shall attend schools provided for the other. Under the Constitution of 1901 school funds must be apportioned to the several counties in proportion to the number of children and to the districts of the counties so as to provide as near as practicable school terms of equal duration. Sec. 256, pp. 134, 135.

FUNDS PRESERVED.—The principal of all funds from sale of school property before or hereafter granted by the United States to the State shall be preserved inviolate. The income only shall be used. Sec. 257, p. 135.

Funds donated by the State or by individuals, or escheating to the State, shall be faithfully applied to school purposes. Sec. 258, p. 135.

POLL TAX.—The poll tax shall be applied to school purposes in the counties where collected. Sec. 259, p. 135.

SIXTEENTH SECTION FUND: SPECIAL TAX FUND.—The sixteenth section fund plus the revenue fund and the funds from property donated by the United States and by individuals and estates which have escheated together with a special annual tax of thirty cents on each $100 worth of property, shall be applied exclusively as a school fund, and it shall be the duty of the Legislature to increase it from time to time. This special tax provision was not included in Constitution of 1875, it amounts to nearly one-half of all the revenue received by the State from the property or ad valorem tax, the Constitutional limit being sixty-five cents. This was one of the wisest and most beneficent provisions of the new Constitution. When taken in connection with the other provision authorizing counties to levy a special tax for education, if ratified or authorized by a three-fifths vote of the people in the county will greatly enhance and increase the public school fund of the State. This is one of the most marked and certain evidences of progress and civilization. It was only a few years ago since the State appropriated the magnificent sum of seventy-two cents per capita per annum

for the education of the children. Under the existing Constitution and laws this is or soon will be increased several dollars per capita. Sec. 260, pp. 135, 136.

TEACHERS, PAYMENT OF.—Not more than four per cent of the school funds shall be used otherwise than for the payment of teachers, unless by a two-thirds vote of the Legislature. Sec. 261, p. 136.

SUPERINTENDENT OF EDUCATION.—The supervision of the public schools shall be vested in the Superintendent of Education, whose powers, duties, and compensation shall be fixed by law. The Constitution of 1875 provided that he should be elected. This provision is omitted from the Constitution of 1901. Sec. 262, p. 136.

SECTARIAN OR DENOMINATIONAL SCHOOLS.—Sectarian or denominational schools shall not be supported from the school fund. Sec. 263, p. 136.

UNIVERSITY OF ALABAMA.—The University shall be under the management of a Board of Trustees. The Governor and Superintendent of Education are ex officio members of the Board of Trustees, and the Governor is President of the Board. The successors to those trustees now in office shall be elected by the other members of the Board of Trustees instead of being appointed by the Governor, as provided in Constitution of 1875. The terms of office are so arranged that a minority only can expire at any one time, and the other members elect a successor by a secret ballot, who holds office until his election is confirmed or rejected by the Senate, and if confirmed then during the term for which he is elected. The superintendent must certify to the Legislature the names of the trustees elected since the last session; if any are rejected the Senate shall elect trustees instead of those rejected. In case of vacancy for other cause than expiration of the term, the board elects a successor until the next session. The term of office is twelve years. The provision of the election of these trustees is entirely changed by the new Constitution. Before, they were appointed by the Governor by and with the advice and consent of the Senate, and held office until their successors were appointed and qualified. Sec. 264, pp. 136, 137.

INTEREST ON UNIVERSITY FUNDS.—Sec. 265 of the new Constitution provides that the State shall pay to the university the sum of $36,000 per annum as interest on university funds heretofore covered into the treasury, for the maintenance and support of said institution, and authorizes the university to abolish the military system without diminishing the annual interest payable out of the treasury for the support of the university. This is an entirely new constitutional provision. It had been theretofore regulated by statute, and hence the stability and uniformity of the amount payable to the university by the State depended upon the whims and caprice of every Legislature. This being the university's chief source of income, its very existence was often threatened by legislators who were not friendly to the institution. The payment of this amount by the State to the university is not understood by the masses of the people; it **is not a gratuitous appropriation by the** State to this institution; but is a payment of this amount as interest on the university fund which the State at one time held in trust for the university and which it allowed to be wasted. Though there has been a great difference of opinion as to the amount of the debt, if any, which the State owes the university. It is contended by the friends of the university that the State, upon a fair settlement, owes the university nearly two million dollars, though the State prior to the Constitution had never recognized a debt of more than three hundred thousand, but this provision allowing thirty-six thousand annually is considered to be a recognition of an indebtedness of four hundred and fifty thousand. These constitutional provisions as to the university, as a matter of fact and history, is due largely to the efforts of the lamented Tennant Lomax, who was an alumnus, trustee and friend of the university, and was also a member of the Constitutional Convention. pp. 137, 138.

ALABAMA POLYTECHNIC INSTITUTE, AGRICULTURAL AND MECHANICAL COLLEGE, POPULARLY CALLED AUBURN.—This is a State institution under the control of

a Board of Trustees who are appointed by the Governor by and with the advice of the Senate, and hold office for a term of twelve years; the board is divided into three classes so that one-third of the board is chosen every four years. The Governor and Superintendent of Education are ex officio members of the Board of Trustees, and the Governor is President of the Board. This provision is substantially as it was in the Constitution of 1875 with the exception that the term of office is made twelve years instead of six. Sec. 266, p. 138.

LOCATION OF University, Auburn, School for Deaf and Blind, and Girls' Industrial School, as now established, shall not be changed except by a two-third vote of the Legislature. Sec. 267, p. 139.

SCHOOL CENSUS.—The Legislature shall provide for taking a school census by townships and districts once in two years, and shall provide punishment for fraudulent returns. This is an entirely new provision. Sec. 268, p. 139.

COUNTIES MAY LEVY SPECIAL TAX.—Any county may levy a special tax for school purposes not exceeding ten cents on every hundred dollars, if first submitted to a vote and carried by a three-fifths vote of those voting at the election, provided this does not increase the rate of State and county tax combined to more than one dollar and twenty-five cents on the hundred dollars worth of taxable property, excluding special county taxes for buildings, roads, bridges, and debts. This is also an entirely new provision, and it is to be hoped that it will greatly increase the school funds and encourage and stimulate education. Mobile, Decatur, New Decatur, and Cullman are exempt to certain extents therein specified from the provisions of the Constitution as to education. Secs. 269, 270, pp. 139, 140.

## MILITIA.

The Constitutional provisions as to the militia are practically the same in the Constitution of 1901 as in 1875, requires that the Legislature shall declare who constitutes, may organize, arm, and discipline a State and naval militia to conform as near as possible to the United States regulations; each company and regiment shall elect its own officers; the militia shall be privileged from arrest during service, going to and returning from; Governor, with the advice and consent of the Senate, shall appoint general officers whose term shall be four years. Governor and generals appoint their own staff, and shall provide for the safe-keeping of arms, ammunition, etc.; the militia shall receive no rations or emoluments while not in active service. Secs. 271-278, pp. 140, 141.

## OATH OF OFFICE.

The Constitution provides that legislators and all officers, executive and judicial, shall take an oath or affirmation, and prescribes a form therefor. This is practically the same in both Constitutions. Sec. 279, p. 141.

## MISCELLANEOUS PROVISIONS.

HOLDING TWO OFFICES AT THE SAME TIME PROHIBITED.—No person can hold two offices of profit and trust under the United States or State, provided one is under the State, but Justices of the Peace, constables, notaries public, and commissioners of deeds and postmasters whose salaries are less than $200 are exceptions. Sec. 280, p. 142.

SALARY, FEES, OR COMPENSATION NOT INCREASED OR DIMINISHED DURING THE TERM OF OFFICE to which officer is elected or appointed. (In the opinion of the writer this provision will lead to more litigation than any other one provision in the Constitution. For this reason it was very unwise. It should have been limited to salaries. Needed legislation cannot be enacted without infringing upon this provision.) Sec. 281, p. 142. The above is an entirely new provision.

GIVING EFFECT TO CONSTITUTION.—The Legislature must pass laws to give effect to Constitution. Sec. 282, p. 142.

VALIDATING ACTS OF THE LEGISLATURE.—Sec. 283 of the Constitution validates two acts of the Legislature therein mentioned for the purpose of adjusting the bonded debt of the State. p. 142.

AMENDING CONSTITUTION.—The Legislature may propose amendments to the

Constitution; the bill must be passed by a three-fourths vote of the members elected, but it must be ratified by a vote of the qualified electors, to be held as provided for in section. Sec. 284, pp. 143, 145.

REPRESENTATION IN THE LEGISLATURE.—Representation in the Legislature shall be based upon population, and this basis shall not be changed by constitutional amendment. There are a great many changes made in the mode of the passage of bills proposing amendments and of holding election to ratify them. Sec. 285 contains provisions regulating the ballot to be used in elections ratifying constitutional amendments. pp. 145, 146.

CONSTITUTIONAL CONVENTION.—A Constitutional Convention may be called by the Legislature, but the bill must be passed by a majority of all members elected to each house; the act or resolution calling the Convention shall not be repealed except upon a majority vote of all members elected and at the same session the act or resolution was passed, but the Convention itself when assembled may establish such ordinances and perform such things as to the Convention may seem necessary or proper. This provision is very different from that of the Constitution of 1875; the only thing in common is that both provisions require that the question of convention or no convention shall first be submitted to a vote of the qualified electors of the State and approved by a majority of those voting at such election. Sec. 286, p. 146.

GOVERNOR DOES NOT APPROVE BILL.—A bill or resolution calling a Constitutional Convention shall not be submitted to the Governor for his approval. Sec. 287, pp. 146, 147.

## SCHEDULE.

The schedules of the two Constitutions are practically the same. The purpose of the schedules are to carry the Constitution into effect and without nullifying other laws necessary to the proper administration of the government, consequently the schedule provides that laws not inconsistent with the Constitution at its adoption remain in force until subsequently altered or repealed; and that all bonds or obligations, that all suits, actions, prosecutions shall remain in force and unaffected by the ratification of the Constitution; and that all officers in office at the time shall continue for their full term and exercise the duties they would have done but for the Constitution. The schedule also provides for the ratification of the Constitution by election, provides the notice to be given, and sets out the names of the officers and members of the Constitutional Convention. pp. 147-152.